Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Julia Cash was an outstanding student, and I am honored to recommend her for a judicial clerkship in your chambers. I had the pleasure of teaching her in my Spring 2023 Trial Practice & Applied Evidence course at Georgetown University Law Center ("Georgetown"). Julia is intelligent, hard-working, and passionate. I believe she would share keen insights and work diligently, thereby being a great asset to your chambers,

I was a federal prosecutor for over 37 years, teaching frequently in the Department of Justice's advocacy center and overseas while carrying a full docket of cases. I have been an adjunct professor at various law schools since 2006, including the last three years teaching Trial Practice & Applied Evidence at Georgetown. As you might expect from the title of the course, my goal is to enable the students to be able to conduct a trial from beginning to end, including proper application of the Rules of Evidence.

Julia entered my class with some experience in trial advocacy. She had competed in mock trial as an undergraduate and went on to coach other students following her graduation with great success. At Georgetown, she competed as a member of the Moot Court team. Even with that background Julia approached my class with exceptional curiosity, often asking questions to expand her prior understanding.

Specifically, Julia aided the learning process for everyone in the course by often asking how a particular factual or legal issue might be addressed in a real court case, resulting in interesting and dynamic discussions. Julia was very interested in obtaining practical, rather than theoretical, advice. I very much appreciated Julia's knowledge of trial advocacy and the rules of evidence which enabled her to take a leadership role in the course.

Put simply, Julia was an excellent student and a team player. She was consistently prepared and would often begin or lead our class discussions. Julia's command over the rules of evidence was quite impressive and she was also willing to defend her positions, leading us to get into class debates about the value of a best evidence objection or whether certain testimony would be barred under Rule 403. Julia was an effective advocate, and a graceful loser, recognizing that there were many aspects of the law she still could learn.

Outside of our conversations, Julia was always willing to help her classmates, thoughtfully listening to their performances and giving specific, effective feedback. Moreover, Julia was willing to take criticism and would always incorporate any suggestions, whether from me or her classmates, into her next performance. In our final trial, Julia and her partner worked well together to craft a great defense. Her performance was one I would expect from a more experienced litigator. I gave Julia an A for the course.

There is no question in my mind that Julia has the intelligence, legal skills, and professional qualities to be a great law clerk. If you have any additional questions or require any further information, please do not hesitate to contact me.

Sincerely,

Professor Bonnie S. Greenberg
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Dear Judge Walker:

I hope this letter finds you well. I am writing to very enthusiastically recommend Julia Cash for a judicial clerkship. Julia is a supremely intelligent student and a very highly skilled researcher and writer. I am confident (in the highest degree) that she would be an excellent addition to your chambers.

Julia was a student in my "Advanced Evidence: Supreme Court & Constitution" seminar course. This course requires the students to write an advanced scholarly research paper through several drafts over the course of the semester, as well as to participate in regular class sessions and coursework. I give students freedom to write the advanced scholarly research paper about whatever legal topic may pique their interest within the scope of the seminar. The papers go through several drafts as the semester progresses. Each week, the class reads each other's work and comes ready to give critiques of their peers' draft papers. I myself also critique each draft both orally and in writing. [My own background is that of a practicing lawyer (in trial and appellate litigation) and subsequently as a professor at Georgetown Law for the last several decades.]

For my course, Julia wrote a thirty-seven-page paper analyzing how the Supreme Court's recent decision in *New York Rifle & Pistol Association v. Bruen* (broadening the constitutional right to bear arms) affects laws disarming those who commit domestic violence. The paper surveyed past Supreme Court precedent, dozens of lower court decisions, and a variety of historical source materials. Her final paper was extremely well-written, thoughtful, and thorough. She critiqued the *Bruen* opinion with nuance and analytical precision, exhibiting an ability to thoughtfully engage with and address tough counterarguments. Her ability to synthesize and analyze precedent is well beyond her years. Her writing is concise, crisp, and easy to follow.

I emphasize that Julia demonstrated excellent research skills. Her paper was extremely well documented with citations to a wide range of sources. Given the contemporary nature of Julia's topic, new cases on the subject were being decided as Julia proceeded through her drafts. She incorporated these into her analysis along with new articles and portions of oral argument transcripts. Her final paper provided a thorough survey of a swiftly evolving and uncertain area in the law. Her peers were as impressed with her and her drafts as I was.

Oral presentation of drafts is also required in the course. Julia presented her drafts orally in front of the class with clarity and impact. She conveyed her thoughts succinctly and efficiently. It was clear to me that Julia had immersed herself in the material and had become an expert on her topic.

It is also required in the course that students read, hear, and comment on the drafts of the other students. Julia's comments on other students' drafts were as noteworthy as her own drafts, her oral presentations, and her researching and writing skills. In regard to commenting on the drafts of others, she frequently supplied the other students with pertinent suggestions and observations, relevant additional related areas and citations, and helpful ways papers could be improved, while at the same time enthusiastically giving recognition to their good points. She did it all in a kind, polite fashion that made her popular with her classmates. One student told me Julia was regarded as the "Simon Cowell" of the class—the person with the highest standards, the one that you had to please with your draft (aside from the professor). This student was referring of course to the English guy who is/was the toughest, frankest judge on the "American Idol" and "America's Got Talent" TV shows. But this student hastened to add that Julia does it in the nicest, kindest way.

In sum, Julia always came prepared to class and was an essential participant in our group discussions. She was supportive of her fellow classmates and her commentary made it clear that she was invested in their work. She was a real "presence" in the classroom, challenging her peers and asking thoughtful questions to our esteemed guest speakers, all in a delightful, appreciated manner. She is collegial to work with.

Her hard and able work on all the levels I have mentioned in this letter obviously earned her an "A" in the course.

Bottom line, I am sure Julia would be great in any legal position, including (and perhaps especially) as a judicial law clerk. Having seen the quality of work she is capable of producing for my class, I have no doubt she will be able to tackle any assignment given to her. I recommend her with great enthusiasm, and I hope you will let me know if I can be of any further assistance in connection with considering her for a position with you.

Sincerely,

Paul F. Rothstein

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Dear Judge Walker:

I am writing to you in support of the candidacy of Julia Cash, who has recently applied to you for a clerkship. Julia was a student in my class in Supreme Court Litigation, which I have taught at Georgetown since 2006. She distinguished herself in all aspects of our work, receiving an "A" grade and tying with one other student for the highest point total. From her class work and from talking with her outside of class, I believe that she would be a really excellent law clerk.

Students in my class are tested on several levels, including oral advocacy, the ability to informally discuss legal issues and principles, and most importantly, legal writing in the form of two short Supreme Court briefs in actual cases, including one reply brief in a case from the current Court Term (*Dubin v. US*). Probably of greatest relevance to the role of law clerk, Julia's work on the two briefs was truly excellent.

She has a very clear and direct writing style, and a strong intuitive sense of the relative force carried by various arguments and of how to make assertions in the most compelling ways. Her briefs are quite well organized. They flow logically and frame an argument that is easy to grasp. Her headings exhibit substantial care to accurately capture the key points being made. While I spend at least a couple of hours reviewing and commenting on these briefs, in Julia's case, my suggestions for improvement were quite minimal. Her briefs seem very much the work of an experienced lawyer, well ahead of what one usually sees from even a very capable second year law student.

Her moot court argument in *Groff v. Dejoy* – before the rest of the class sitting as justices – was of a similar quality. It was carefully crafted to lead with the strongest points on behalf of the respondent United States, defending a questionable interpretation of the religious accommodation provision of Title VII, and she was also well prepared to address the tough questions that she faced. As with her briefs, her argument was the work of someone with a very good sense of how to go about the task at hand. She also was a very effective questioner of her colleagues in the arguments that they presented, and an active participant in class discussions, not afraid to speak forcefully when she felt it appropriate under the circumstances.

Since the end of the class, and Julia's request that I serve as a clerkship recommender, I have come to learn a bit more about her background that I believe may provide some insight into the maturity and high quality of her work. A big part of that is her extensive and very successful experience in high school, college, and after, in activities of the American Mock Trial Association. After being introduced to the activity by her high school government teacher in Dayton, Julia pursued it during her time at Ohio State, where she graduated in three years.

Her efforts won her an All-American Award, as one of the 20 top advocates in the country. Following graduation, she moved to North Carolina to spend a gap year in Americorps, where she worked with asylum seekers in a wide variety of ways. While there, though, she was contacted by the mock trial team at Duke, and ended up serving for three years as their coach, which has come to be ranked in the top five teams out of 700 total teams nation-wide.

In talking with her recently, I am also very impressed with Julia's drive, resourcefulness and clear sense of purpose. She is a high energy person, and over the years has worked numerous jobs to support her education. She describes herself as passionate about learning, and eager to get into the weeds on many topics. These traits are illustrated, I think, by her decision to transfer to Georgetown which came when she was working at the Department of Justice in the summer of 2022, and arrived at the view that such a change would give her a broader range of possible areas of study. Starting there a couple of months later, I was also impressed with her finalist status this last year in the Leahy moot court competition for non-1L students.

Julia is obviously excited about her legal career, and past performance in many respects noted on her resume strongly suggests that she will make the most of it. At this point, from what I have seen, she seems uniquely suited to serve with distinction as a law clerk. I hope you will have an opportunity to meet with her.

Best regards,

Donald Ayer
Adjunct Professor

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WRITING SAMPLE

This writing sample is an excerpt from an appellate brief I wrote for my first-year writing class, "Lawyering II." I have since updated this sample to better reflect my current writing abilities. This excerpt is my own work.

This case involved an alleged unconstitutional search. Federal agents found a key fob that they believed belonged to Davina Day, a suspect in an ongoing investigation. They followed Ms. Day to her apartment complex but lost her before discovering exactly where she lived. Not knowing which unit belonged to Ms. Day, the agents proceeded to walk building-to-building, door-to-door, waving the key fob in front of each door's electronic lock. When they reached Ms. Day's door, they waved the fob in front of the lock and saw a green light. Using this information, the agents obtained a search warrant for Ms. Day's apartment. Ms. Day moved to suppress the evidence obtained through the search warrant, arguing that the agents' actions violated the Fourth Amendment. The United States District Court for the District of Columbia denied the motion.

I was assigned to represent Ms. Day in her appeal to the United States Court of Appeals for the D.C. Circuit. In this brief, I argue that the agents conducted an unconstitutional search in the curtilage of Ms. Day's home. For brevity, this excerpt contains only the argument section of my brief.

ARGUMENT

I. The agents violated the Fourth Amendment because they searched the curtilage of Ms. Day's home without license.

The Fourth Amendment to the U.S. Constitution guarantees people freedom from unreasonable searches. U.S. CONST. amend. IV. The Fourth Amendment's protections extend beyond the interior of the home to the area "immediately surrounding and associated with th[e] home." *Florida v. Jardines*, 569 U.S. 1, 6 (2013). This surrounding area is called curtilage and is treated as "part of the home itself for Fourth Amendment purposes." *Id.* (citing *Oliver v. United States*, 466 U.S. 170, 180 (1984)). Thus, an unlawful search occurs when the government obtains information via unlicensed physical intrusion into an individual's curtilage. *United States v. Jones*, 565 U.S. 400, 406-407 (2012). Here, federal agents violated Ms. Day's Fourth Amendment rights because they conducted a search in Ms. Day's curtilage without license.

A. The area outside of Ms. Day's door is curtilage because it is immediately surrounding and associated with her home.

Curtilage includes areas "immediately surrounding and associated with the home." *See Jardines*, 569 U.S. at 7. To determine whether an area is curtilage, courts ask whether it is "easily understood from our daily experience" that the "the activity of home life extends" to the area in question. *Id.* For example, the Supreme Court has reasoned that curtilage includes areas such as a "porch," "side garden," and the area "just outside a front window." *Id.* at 6. Thus, the Fourth Amendment forbids law enforcement from "trawl[ing] for evidence" in any of these areas without license. *Id.*

Here, the threshold to Ms. Day's apartment is curtilage because it is an area immediately surrounding and associated with her home. Indeed, the agents stood on Ms. Day's doormat and waved a key fob in front of her lock—the searched area was no doubt "immediately

surrounding" her apartment. All told, the police cannot "trawl for evidence" any more at the threshold of an apartment than at the porch immediately outside a homeowner's door. *Id.*; *see also United States v. Whitaker*, 820 F.3d 848, 854 (7th Cir. 2016) (noting that it would be arbitrary to differentiate between the front porch of a single-family home and the closed hallway of an apartment building).

Applying the same logic, the Supreme Court of Illinois held that the area outside a defendant's apartment door was curtilage. *People v. Bonilla*, 120 N.E.3d 930, 937-38 (Ill. 2018). In *Bonilla*, police entered a three-story, twelve-unit apartment building through an unlocked door and conducted a canine search outside a defendant's apartment door. 120 N.E.3d at 932. Applying *Jardines*, the court held that the searched area was curtilage, reasoning that the area outside a defendant's apartment door is effectively indistinguishable from a homeowner's porch. *Id.* at 937. Indeed, "[j]ust like the front porch[], . . . the threshold of [an] apartment door constitutes an area adjacent to the home to which the activity of home life extends." *Id.* at 938 (internal quotation omitted). The Court further reasoned that the Fourth Amendment "does not differentiate as to the type of home involved[,]" and thus it would be "unfair" to hold that police cannot search a homeowner's doorstep but "can go into [a tenant's] hallway and [search her] door" simply because she "happen[s] to live in an apartment." *Id.* at 937 (internal quotations omitted).

The same reasoning applies in this case. Here, as in *Bonilla*, the Defendant lives in a three-story, twelve-unit apartment building. J.A. 9-10. Here, as in *Bonilla*, the police entered the area immediately outside the Defendant's door. J.A. 23. And here, as in *Bonilla*, the police searched for evidence at the threshold of the Defendant's apartment. J.A. 23. Thus, just like in *Bonilla*, the area outside Ms. Day's door is curtilage. *See also People v. Burns*, 50 N.E.3d 610,

620 (Ill. 2016) (applying *Jardines* to hold that the landing outside a tenant's apartment door was curtilage).

The lower court here charted a different course, relying on other courts that applied *United States v. Dunn*, 480 U.S. 294, 301 (1987), to hold that the areas outside of an apartment unit door are not curtilage. J.A. 36 (citing *State v. Edstrom*, 916 N.W.2d 512, 521 (Minn. 2018); *United States v. Sweeney*, 821 F.3d 893, 902 (7th Cir. 2016)). In *Dunn*, the Supreme Court determined the scope of a ranch owner's curtilage by considering four factors: (1) the searched area's "proximity" to the home, (2) whether the area was "within an enclosure surrounding the home," (3) how the area was used, and (4) the steps taken by the rancher to prevent the area from being seen by others. 480 U.S. at 301. Applying these factors, some courts have held that a tenant's curtilage does not extend to the hallway outside her door because the hallway is neither enclosed within the apartment unit nor shielded from the view of others. *See Edstrom*, 916 N.W.2d at 518-19; *United States v. Trice*, 966 F.3d 506, 515 (6th Cir. 2020).

But the *Dunn* factors are a poor fit for a case involving a search within a multi-unit dwelling. In *Dunn*, the question before the Court was whether a barn, located fifty yards from a fence that surrounded a ranch house, was considered the curtilage of that house. 480 U.S. at 299. In that context, it made sense for the Court to consider whether the defendant's barn was enclosed by the fence that surrounded his home, and whether the defendant had taken affirmative steps to shield his barn from others standing in neighboring fields. *Dunn*, 480 U.S. at 302-03.

It makes little sense to apply the same factors to a multi-unit dwelling. Indeed, renters are generally prohibited from doing the things that *Dunn* seemingly requires a defendant to do. For instance, a tenant in a multi-unit dwelling is usually contractually barred from taking steps to shield the area in front of her door from the view of her landlord, other tenants, or maintenance

workers—e.g., she cannot erect a wall or curtains in her hallway. Nor can a tenant "fence [in]" the area in front of her door such that it is "within an enclosure surrounding" her apartment. *Dunn*, 480 U.S. at 302. Doing any of these things would almost certainly violate a tenant's lease, would likely violate housing codes, and could open the tenant to the threat of eviction. The Fourth Amendment cannot possibly require an apartment-dwelling defendant to violate the law and risk eviction to earn the same constitutional protections easily obtained by the average homeowner. *See, eg.*, *Bonilla*, 120 N.E.3d at 937 (the Fourth Amendment "does not differentiate as to the type of home involved") (internal quotation omitted).

Despite this reasoning, the lower court relied on opinions that mechanically applied the *Dunn* factors to cases where the factors simply did not belong, leading to illogical results. For example, in *Edstrom*, the Supreme Court of Minnesota found that the area immediately outside of a tenant's door was not curtilage because the area was "not fenced or otherwise enclosed with the home" and the tenant did not "[make] any attempt to obscure the area" from his neighbors' view. 916 N.W.2d at 518-19. But the tenant in that case lived on the third floor of a multi-unit apartment building—he was almost certainly legally barred from doing the very things the court seemingly required him to do to gain the Fourth Amendment's protection. *See also United States v. Hopkins*, 824 F.3d 726, 732 (8th Cir. 2016) (noting that under the *Dunn* factors, even the front porch in *Jardines* would not have qualified as curtilage).

Nothing in the Supreme Court's case law requires this counterintuitive approach. The Court has never held that *Dunn* must be applied to determine curtilage in *every* case, regardless of how much the facts differ from the *Dunn* rancher and his barn. Quite the opposite: when faced with cases in which the facts differed from *Dunn*, the Court eschewed consideration of the *Dunn* factors altogether. *See Jardines*, 569 U.S. at 6. For example, in *Jardines*, the Court did

not even mention the *Dunn* factors; instead, it determined the parameters of curtilage simply by asking whether the defendant's porch was "immediately surrounding" and "associated" with the home. *Id.*; *see also Collins v. Virginia*, 138 S. Ct. 1663, 1667 (2018) (applying *Jardines*—not *Dunn*—to determine if a section of a driveway was curtilage).

B. Even if this Court applies *Dunn*, the area outside of Ms. Day's door is still curtilage.

Even if this Court applies the *Dunn* factors, the area outside of Ms. Day's door is still curtilage. The *Dunn* factors are used as a heuristic tool, and no one factor is meant to be dispositive. 480 U.S. at 301. Rather, the factors are to be applied only as needed to answer the central inquiry: "whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." *Id.* Indeed, the *Dunn* Court warned against mechanically applying the factors to reach a "correct" answer in every scenario. *Id.* Thus, an area adjacent to a home can still be curtilage if it fails to satisfy some of the *Dunn* factors. *Id.* Under *Dunn,* the searched area here is curtilage because (1) it is exceedingly close to Ms. Day's apartment, and (2) Ms. Day's apartment is uniquely isolated from the public, such that its use is intimately tied to her home. *Id.* Thus, while *Dunn* is generally a poor fit for cases involving multi-unit dwellings, this case presents an instance in which the area outside an apartment door still qualifies as curtilage—even under the *Dunn* factors.

Here, the first *Dunn* factor—proximity— is satisfied. The agents got as close as they could to Ms. Day's door without going inside. They stood on her doormat and waved her key fob close enough to the sensor that it unlocked her door. J.A. 11. *See, e.g.*, *Edstrom*, 916 N.W.2d at 518 (reasoning that the proximity factor was satisfied because the hallway adjacent to the defendant's apartment was "immediately adjacent" to the home).

Next, the third *Dunn* factor—nature of use—is also satisfied because the area outside of Ms. Day's door is generally used only by Ms. Day. Nature of use is the "most telling" factor in the *Dunn* inquiry. *See United States v. Jackson*, 728 F.3d 367, 374 (4th Cir. 2013); *Trice*, 966 F.3d at 515. Indeed, multiple courts have held that an area is curtilage when it satisfies this factor, even when other factors are not satisfied. *See United States v. Burston*, 806 F.3d 1123, 1127 (8th Cir. 2015); *Hopkins*, 824 F.3d at 732. In a multi-unit dwelling, this factor is satisfied when the use of the area is "generally limited" to the tenant. *See Burns*, 50 N.E.3d at 621. For example, in *Burns*, the Supreme Court of Illinois held that the area in front of an apartment door was curtilage in part because that area was generally used by only the defendant and his guests. *Id.* By comparison, other courts have held that an area outside of a defendant's door is *not* curtilage where the area was "used by other tenants as passageway to the basement laundry unit," *Trice*, 966 F.3d at 515, or where "other tenants use[d] [the area] jointly." *Edstrom*, 916 N.W.2d at 518.

Here, Ms. Day's apartment was located at a dead end behind the staircase; thus, no other tenant needed to walk by her door to reach another apartment, the laundry room, the mailbox area, or any other communal space in the building. J.A. 21. Indeed, there is no evidence in the record here that anyone besides Ms. Day and her guests ever regularly walks into the alcove where her door sits.

To be sure, the area where the agents stood is not within an enclosure surrounding Ms. Day's apartment, and Ms. Day took no affirmative steps to shield the area from others. But failing to satisfy any given *Dunn* factor is not dispositive. *See Dunn*, 480 U.S. at 301. For example, the Eighth Circuit held that the area in front of a door to a townhome apartment was curtilage even though it was neither enclosed nor shielded from view because the area was close

to the apartment unit and the area was regularly used by the residents living in that unit as they entered and exited. *Hopkins*, 824 F.3d at 732. Here, like in *Hopkins*, the searched area was the space immediately outside Ms. Day's door and Ms. Day walked through that area daily. J.A. 11. Thus, even if this Court applies *Dunn*, the area outside Ms. Day's door is curtilage.

C. The agents had neither an express nor implied license to search the area outside Ms. Day's door.

If an area is curtilage, the government violates the Fourth Amendment by searching that area without license. A resident can give the government an explicit license (i.e., by consent to a search). *Jardines*, 569 U.S. at 7-8. Meanwhile, an implicit license is dictated by societal norms—for example, a police officer generally has an implicit license to "approach a home and knock, precisely because that is no more than any private citizen might do." *Id.* (internal quotation omitted). But police do not have an implicit license to "explor[e] the front path with a metal detector, or march[] [a] bloodhound into the garden." *Id.* at 9. Here, the police had neither an explicit nor implicit license. Ms. Day did not give the agents permission to search the area outside her door. J.A. 17. And while the agents may have had an implicit license to "approach [her apartment door] and knock," they certainly did not have license to attempt to unlock that door using a key fob that they found in a pet store parking lot. *See Jardines*, 569 U.S. at 9.

II. The agents' search violated the Fourth Amendment because Ms. Day had a reasonable expectation of privacy in the area immediately outside her door.

Even if this Court believes that the searched area is not curtilage, the agents' conduct still violated the Fourth Amendment because Ms. Day had a reasonable expectation of privacy in the area immediately outside her door. Indeed, even when the government searches an area that is not curtilage, the search is still unconstitutional when the defendant has a reasonable expectation of privacy in the searched area. *Jones*, 565 U.S. at 409. A person has a reasonable expectation

of privacy in a searched area if (1) she has a subjective expectation of privacy in that area, and (2) "society is prepared to recognize that expectation as objectively reasonable." *California v. Ciraolo*, 476 U.S. 207, 211 (1986) (defining the two-part "reasonable expectation of privacy" test based on *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring)). Here, all agree Ms. Day had a subjective expectation of privacy in the area outside her door. Thus, the dispositive question is whether that expectation was objectively reasonable.

To determine whether a tenant has an objectively reasonable expectation of privacy, courts look to what society would "recognize as reasonable" considering the circumstances. *Katz*, 389 U.S. at 360 (Harlan, J., concurring). A person has heightened privacy interests "in [her] home *and the surrounding area*." *Jardines*, 569 U.S. at 7 (quoting *Ciraolo*, 476 U.S. at 213) (emphasis added).

Here, Ms. Day had an objectively reasonable expectation that members of the public would not walk up to her door and try to unlock it. To start, Ms. Day's apartment is housed within a typically locked apartment complex, located on the top floor, at the end of a hallway behind a staircase. J.A. 9-10, 21. There is no unit in the building further from the public than Ms. Day's apartment. And even if Ms. Day could expect strangers to walk outside her apartment, she certainly could not expect those strangers to walk right up to her door and attempt to unlock it. Indeed, society would no doubt "recognize as reasonable" a tenant's expectation that no stranger would attempt to unlock her door using a key found in a parking lot across town. *Katz*, 389 U.S. at 360 (Harlan, J., concurring).

In a similar case, the Nebraska Supreme Court held that a tenant had an objectively reasonable expectation of privacy in the area outside her door. *State v. Ortiz*, 600 N.W.2d 805, 819 (Neb. 1999). In *Ortiz*, police brought a drug dog into the hallway outside a tenant's door to

search for evidence and directed the dog to sniff at the threshold of the tenant's door. *Id.* at 812. The *Ortiz* Court held that this search violated the Fourth Amendment because "a hallway shared by tenants in a private multi-unit dwelling is not a public space . . . [but rather] a private space intended for the use of the occupants and their guests." *Id.* at 819 (internal quotation omitted). Thus, the tenant had "a legitimate expectation of some measure of privacy" in that space, and the police violated that expectation by walking right up to the tenant's door to search for evidence. *Id.* The same logic applies here: Ms. Day could reasonably expect "some measure of privacy" in the hallway outside her door—and the police violated that expectation by searching for evidence at the threshold of her apartment. *Id.*; *See also United States v. Carriger*, 541 F.2d 545, 552 (6th Cir. 1976) (holding that tenants have a reasonable expectation of privacy in the common areas of a locked building); *Jardines*, 569 U.S. at 13 (Kagan, J., concurring) (explaining that the "practical value" of Fourth Amendment privacy protections is to prevent police officers from "standing in an adjacent space" and "trawl[ing] for evidence with impunity").

To be sure, the court below held that Ms. Day cannot expect privacy in the area outside her door because she lacks a "right to exclude third parties" from that area. J.A. 37. But under *Jardines*, a defendant has a reasonable expectation of privacy not just in her home, but in the "area surrounding" her home. 569 U.S. at 6. The lower court's purported legal-right-to-exclude test arbitrarily denies Ms. Day this constitutional protection simply because she lives in a multi-unit dwelling. Indeed, no tenant can legally exclude *all* people from the hallway outside her door. So, while a person who lives in a single-family home has constitutional protections in "surround[ing]" areas such as his "front porch," "side garden," and the area "outside [his] front window," *id.*, under the lower court's test, a person living in an apartment complex has no such privacy even a millimeter outside his doorstep. It makes little sense to assert that the Fourth

Amendment's protections wax and wane based on nothing more than the circumstances that decide homeownership. *See Whitaker*, 820 F.3d at 854.

What is more, under Supreme Court precedent, a total right to exclude has never been a prerequisite for a constitutional expectation of privacy. Rather, such an expectation turns on what society deems reasonable under the circumstances. *Katz*, 389 U.S. at 360 (Harlan, J., concurring). And societal norms dictate that a tenant generally can expect *some* privacy in the area right outside her door. Sure, a tenant cannot prevent others from merely walking through that space—doing so would likely violate her lease—but that does not mean that the rest of society is free to use the area in front of a tenant's door with impunity. For example, a tenant can reasonably expect that members of the public will not "set up chairs and have a party in the hallway right outside [her] door." *Whitaker*, 820 F.3d at 853. Nor would it be societally acceptable for a stranger to walk up to a tenant's door and attempt to unlock it using a key found in a pet store parking lot. The agents here are no different: by walking up to Ms. Day's door, standing on her doormat, and attempting to unlock her door without any invitation—something that no stranger would reasonably be expected to do—the agents violated Ms. Day's objectively reasonable expectation of privacy.

The government may argue that adopting a bright-line rule asserting there is no reasonable expectation of privacy in the shared hallways of an apartment complex makes it easier for law enforcement to do their jobs. *See, e.g.*, *United States v. Holland*, 755 F.2d 253, 255 (2d Cir. 1985) (reasoning that such a bright-line rule sets a boundary that is "readily apparent to an officer in the field"). But a bright-line rule establishing that a tenant in a typically locked multi-unit dwelling can expect privacy in her hallway is just as easy for law enforcement

to follow. And either way, the Fourth Amendment's privacy protections turn on society's reasonable expectations, not on easing law enforcement's path to arresting a defendant.

Applicant Details

First Name	**Greta**
Last Name	**Chen**
Citizenship Status	**U. S. Citizen**
Email Address	**greta.chen@nyu.edu**
Address	**Address** **Street** **801 15th St S** **City** **Arlington** **State/Territory** **Virginia** **Zip** **22202** **Country** **United States**
Contact Phone Number	**2052389352**

Applicant Education

BA/BS From	**Duke University**
Date of BA/BS	**May 2021**
JD/LLB From	**New York University School of Law** **https://www.law.nyu.edu**
Date of JD/LLB	**May 22, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**New York University Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Johnson, Gail
gail.k.johnson@usdoj.gov
Hershkoff, Helen
helen.hershkoff@nyu.edu
212-998-6715
Yoshino, Kenji
kenji.yoshino@nyu.edu
212-998-6421

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Greta Chen
801 15th Street S, Apt 617
Arlington, VA 22202
(205) 238-9352
greta.chen@nyu.edu

June 12, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

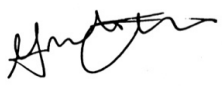
I am a rising third-year student at New York University School of Law seeking a clerkship in your chambers for the 2024-25 term or any term thereafter.

Although I grew up in Alabama, my family has since relocated to Richmond, Virginia, and I am eager to return to this area after graduation. Additionally, I hope to pursue a career in civil rights litigation, and I am particularly interested in clerking for you because of your commitment to public service. Finally, clerking at the Eastern District of Virginia would allow me to work on a wide range of cases in a fast-paced environment, giving me the opportunity to learn from the strategies of practicing attorneys while witnessing how disputes are resolved based on both facts and law.

Attached please find my resume, transcript, and writing sample. The writing sample is a memorandum I wrote during my summer employment at the U.S. Department of Justice. My letters of recommendation are from Helen Hershkoff, Kenji Yoshino, and Gail Johnson. Professor Hershkoff taught my Civil Procedure class, and I worked with her to update the Federal Practice and Procedure supplementation last year. She can be reached at helen.hershkoff@nyu.edu or (212) 998-6285. Professor Yoshino was my Constitutional Law instructor, and I helped draft and revise portions of his article about transgender rights. He can be reached at kenji.yoshino@nyu.edu or (212) 998-6421. Supervisory Trial Counsel Gail Johnson oversaw my work last summer at the Department of Justice, and I consider her a close mentor. She can be reached at gail.k.johnson@usdoj.gov or (202) 616-4280.

If you need any additional information, please do not hesitate to contact me at the above email address or telephone number. Thank you for your consideration, and I look forward to hearing from you.

Respectfully,



Greta Chen

GRETA CHEN

801 15th Street S, Apt 617, Arlington, VA 22202 • (205) 238-9352 • greta.chen@nyu.edu

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, J.D. Candidate, May 2024
GPA: 3.73
Honors: *New York University Law Review*, Executive Editor
Robert McKay Scholar—*top 25% of class after four semesters*
Robert A. Katzmann Fellow—*stipend to conduct research for Katzmann Symposium*
Chesler Scholarship in Litigation—*for demonstrated talent in civil trial litigation*
Activities: Suspension Representation Project, Case Manager and Student Advocate
Asian-Pacific American Law Students Association, Co-Chair

DUKE UNIVERSITY, B.S. in Economics, May 2021
GPA: 3.86
Honors: University Scholars Finalist—*partial tuition scholarship based in part upon academic merit*
Activities: Debating Society, Secretary
Sanford School of Public Policy, Social Media Intern

EXPERIENCE

WILMER CUTLER PICKERING HALE AND DORR LLP, Washington, DC
Summer Associate, May 2023–July 2023

RACIAL EQUITY STRATEGIES CLINIC, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, New York, NY
Legal Intern, January 2023–May 2023
Analyzed legal issues related to redistricting litigation, such as the scope of legislative privilege in voting rights contexts. Reviewed and summarized deposition transcripts to identify favorable and unfavorable testimony in voter suppression case. Prepared comprehensive report on history of discriminatory voting practices in the South.

PROFESSOR KENJI YOSHINO, NYU SCHOOL OF LAW, New York, NY
Research Assistant, October 2022–May 2023
Reviewed and revised forthcoming article about litigation strategies for transgender rights. Researched LGBTQ+ laws across different jurisdictions, comparing the United States to countries like Iran and Japan.

PROFESSOR HELEN HERSHKOFF, NYU SCHOOL OF LAW, New York, NY
Research Assistant, May 2022–October 2022
Researched litigation advantages of the United States as a plaintiff in federal court, focusing on False Claims Act litigation. Edited and cite-checked the most recent edition of the Federal Practice and Procedure supplementation.

U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION, FEDERAL TORT CLAIMS ACT SECTION, Washington, DC
Law Clerk, May 2022–July 2022
Drafted legal memoranda on topics including the applicability of absolute immunity in a malicious prosecution claim. Wrote motion to exclude expert witness testimony of pharmaceutical expert in multimillion-dollar healthcare fraud case. Analyzed admissibility of Office of Professional Responsibility Report findings.

BURR & FORMAN LLP, Birmingham, AL
Pre-Law Intern, June–July 2019, 2020, and 2021
Composed memoranda for corporate and litigation matters. Recommended diversity, equity, and inclusion initiatives to Executive Committee. Awarded 2nd Place in mock trial competition on search and seizure case.

LANGUAGES AND INTERESTS

Conversational in Mandarin; basic Spanish. Enjoy art and photography, playing tennis, and watching horror films.

Name: **Greta Y Chen**
Print Date: **06/07/2023**
Student ID: **N19144876**
Institution ID: **002785**
Page: **1 of 1**

New York University
Beginning of School of Law Record

Fall 2021

School of Law
Juris Doctor
Major: Law

Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: David Simson			
Torts	LAW-LW 11275	4.0	A-
Instructor: Mark A Geistfeld			
Procedure	LAW-LW 11650	5.0	A
Instructor: Helen Hershkoff			
Contracts	LAW-LW 11672	4.0	A
Instructor: Richard Rexford Wayne Brooks			
1L Reading Group	LAW-LW 12339	0.0	CR
Instructor: Randy Hertz, Vincent Southerland			

	AHRS	EHRS
Current	15.5	15.5
Cumulative	15.5	15.5

Spring 2022

School of Law
Juris Doctor
Major: Law

Property	LAW-LW 10427	4.0	B+
Instructor: Katrina M Wyman			
Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: David Simson			
Legislation and the Regulatory State	LAW-LW 10925	4.0	A-
Instructor: Adam B Cox			
Criminal Law	LAW-LW 11147	4.0	A-
Instructor: Ekow Nyansa Yankah			
1L Reading Group	LAW-LW 12339	0.0	CR
Instructor: Randy Hertz, Vincent Southerland			
Financial Concepts for Lawyers	LAW-LW 12722	0.0	CR

	AHRS	EHRS
Current	14.5	14.5
Cumulative	30.0	30.0

Fall 2022

School of Law
Juris Doctor
Major: Law

Resisting Injustice Seminar	LAW-LW 10310	2.0	A
Instructor: Carol Gilligan, David A J Richards			
Resisting Injustice Seminar-Wc	LAW-LW 10469	1.0	A
Instructor: Carol Gilligan, David A J Richards			
Antitrust Law	LAW-LW 11164	4.0	B+
Instructor: Daniel S Francis			
Professional Responsibility and the Regulation of Lawyers	LAW-LW 11479	2.0	A-
Instructor: Barbara Gillers			
Constitutional Law	LAW-LW 11702	4.0	B+
Instructor: Kenji Yoshino			
Research Assistant	LAW-LW 12589	1.0	CR
Instructor: Kenji Yoshino			

	AHRS	EHRS
Current	14.0	14.0
Cumulative	44.0	44.0

Spring 2023

School of Law
Juris Doctor
Major: Law

Racial Justice Colloquium	LAW-LW 10540	2.0	A-
Instructor: Deborah Archer, Vincent Southerland			
Advanced Trial Simulation	LAW-LW 11138	2.0	A-
Instructor: David R Marriott, Evan R Chesler			
Evidence	LAW-LW 11607	4.0	A
Instructor: Daniel J Capra			
Racial Equity Strategies Clinic	LAW-LW 12455	3.0	A
Instructor: Raymond Audain			
Racial Equity Strategies Clinic Seminar	LAW-LW 12456	2.0	A
Instructor: Raymond Audain			
Research Assistant	LAW-LW 12589	1.0	CR
Instructor: Kenji Yoshino			

	AHRS	EHRS
Current	14.0	14.0
Cumulative	58.0	58.0

McKay Scholar-top 25% of students in the class after four semesters
Staff Editor - Law Review 2022-2023

End of School of Law Record

TRANSCRIPT ADDENDUM FOR NYU SCHOOL OF LAW
JD CLASS OF 2023 AND LATER & LLM STUDENTS

I certify that this is a true and accurate representation of my NYU School of Law transcript.

Grading Guidelines

Grading guidelines for JD and LLM students were adopted by the faculty effective fall 2008. These guidelines represented the faculty's collective judgment that ordinarily the distribution of grades in any course will be within the limits suggested. An A + grade was also added.

Effective fall 2020, the first-year J.D. grading curve has been amended to remove the previous requirement of a mandatory percentage of B minus grades. B minus grades are now permitted in the J.D. first year at 0-8% but are no longer required. This change in the grading curve was proposed by the SBA and then endorsed by the Executive Committee and adopted by the faculty. Grades for JD and LLM students in upper-level courses continue to be governed by a discretionary curve in which B minus grades are permitted at 4-11% (target 7-8%).

First-Year JD (Mandatory)	**All other JD and LLM (Non-Mandatory)**
A+: 0-2% (target = 1%) (see note 1 below)	A+: 0-2% (target = 1%) (see note 1 below)
A: 7-13% (target = 10%)	A: 7-13% (target = 10%)
A-: 16-24% (target = 20%)	A-: 16-24% (target = 20%)
Maximum for A tier = 31%	***Maximum for A tier = 31%***
B+: 22-30% (target = 26%)	B+: 22-30% (target = 26%)
Maximum grades above B = 57%	***Maximum grades above B = 57%***
B: remainder	B: remainder
B-: 0-8%*	B-: 4-11% (target = 7-8%)
C/D/F: 0-5%	C/D/F: 0-5%

The guidelines for first-year JD courses are mandatory and binding on faculty members; again noting that a mandatory percentage of B minus grades are no longer required. In addition, the guidelines with respect to the A+ grade are mandatory in all courses. In all other cases, the guidelines are only advisory.

With the exception of the A+ rules, the guidelines do not apply at all to seminar courses, defined for this purpose to mean any course in which there are fewer than 28 students.

In classes in which credit/fail grades are permitted, these percentages should be calculated only using students taking the course for a letter grade. If there are fewer than 28 students taking the course for a letter grade, the guidelines do not apply.

Important Notes

1. The cap on the A+ grade is mandatory for all courses. However, at least one A+ can be awarded in any course. These rules apply even in courses, such as seminars, where fewer than 28 students are enrolled.
2. The percentages above are based on the number of individual grades given – not a raw percentage of the total number of students in the class.
3. Normal statistical rounding rules apply for all purposes, so that percentages will be rounded up if they are above .5, and down if they are .5 or below. This means that, for example, in a typical first-year class of 89 students, 2 A+ grades could be awarded.
4. As of fall 2020, there is no mandatory percentage of B minus grades for first-year classes.

NYU School of Law does not rank students and does not maintain records of cumulative averages for its students. For the specific purpose of awarding scholastic honors, however, unofficial cumulative averages are calculated by the Office of Records and Registration. The Office is specifically precluded by faculty rule from publishing averages and no record will appear upon any transcript issued. The Office of Records and Registration may not verify the results of a student's endeavor to define his or her own cumulative average or class rank to prospective employers.

Scholastic honors for JD candidates are as follows:

Pomeroy Scholar:	Top ten students in the class after two semesters
Butler Scholar:	Top ten students in the class after four semesters
Florence Allen Scholar:	Top 10% of the class after four semesters
Robert McKay Scholar:	Top 25% of the class after four semesters

Named scholar designations are not available to JD students who transferred to NYU School of Law in their second year, nor to LLM students.

Missing Grades

A transcript may be missing one or more grades for a variety of reasons, including: (1) the transcript was printed prior to a grade-submission deadline; (2) the student has made prior arrangements with the faculty member to submit work later than the end of the semester in which the course is given; and (3) late submission of a grade. Please note that an In Progress (IP) grade may denote the fact that the student is completing a long-term research project in conjunction with this class. NYU School of Law requires students to complete a Substantial Writing paper for the JD degree. Many students, under the supervision of their faculty member, spend more than one semester working on the paper. For students who have received permission to work on the paper beyond the semester in which the registration occurs, a grade of IP is noted to reflect that the paper is in progress. Employers desiring more information about a missing grade may contact the Office of Records & Registration (212-998-6040).

Class Profile

The admissions process is highly selective and seeks to enroll candidates of exceptional ability. The Committees on JD and Graduate Admissions make decisions after considering all the information in an application. There are no combination of grades and scores that assure admission or denial. For the JD Class entering in Fall 2021 (the most recent entering class), the 75th/25th percentiles for LSAT and GPA were 174/170 and 3.93/3.73.

Updated: 10/4/2021

U.S. Department of Justice

Civil Division, Torts Branch
Federal Tort Claims Act Staff

Gail K. Johnson
Supervisory Trial Counsel

P.O. Box 888
Benjamin Franklin Station
Washington, D.C. 20044

Telephone: (202) 616-4280
Facsimile: (202) 616-5200

May 23, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
603 Granby Street
Norfolk, VA 23510

Re: Letter of Recommendation for Greta Chen

Dear Your Honor:

It is my professional and personal pleasure to write this letter of recommendation on behalf of Greta Chen. One of the best parts about recruiting volunteer law clerks for the Federal Tort Claims Act (FTCA) Section at the U.S. Department of Justice (Department) is discovering talented future lawyers like Greta. She thrives in an intellectually-challenging environment and produces top-notch legal work while maintaining a pleasant and professional approach. Greta is a standout among not only the pandemic-era law clerk classes but among the over 200 law clerks that I have recruited over nearly 20 years here at the Department. She will thrive and grow working with you and your staff for reasons that will become clear in this letter.

Greta is a second-year law student at New York University and she worked full-time in our Summer 2022 Law Clerk Program. Her classmates included two students from Yale, two from the University of Virginia, and one from Stanford. The class was uber-talented and Greta held her own with them. Greta often worked more than the expected 40 hours per work as she was assigned, along with a Yale clerk, to a high-profile case scheduled for trial. My colleague, Larry Eiser, a seasoned trial lawyer loved working with both and gave them increasingly challenging assignments over the course of the summer. Greta worked on four assignments for Larry during her nine-week stint.

To give you a sense of why Greta became invaluable to Larry, here is an excerpt of a conversation between the two of them

> **Greta**: Larry, Hope you had a good weekend and have sufficiently recovered from last week's deposition. I'm attaching a short memo re: application of the discretionary function exception to XXXXX, since he was the defendant I was most concerned about prosecutorial immunity not applying to (although I think the analysis could apply to all of our defendants).

> The district court seems to have rejected the discretionary function defense based on the first prong of SCOTUS's two-part test, finding that defendants do not have discretion to violate the Constitution. However, the Constitution does not specifically prohibit any of XXXXX actions, and plaintiffs should not be able to circumvent the defense by simply claiming a constitutional rights violation when there isn't one
> **Larry**: This is great stuff Greta! But help me out because my memory is turning to @#%& – did I ask for this?
>
> **Greta**: Haha[. N]ot expressly but we talked about it during our conversation about the immunity argument (about what arguments might apply to XXXXX), and I had some time to look into it and found it interesting!
>
> **Larry**: I thought that's what happened but didn't quite believe it. So you saw that the argument I asked you to research might not win, so you, on your own, researched and prepared a killer memo on the back-up argument? Impressive! You're good to have on a team.
>
> Since I have your attention, let me ask you a couple of follow-ups . . . . (emphasis in the original).

The conversation between Larry and Greta continued as he posed more questions to which she responded, based on her research and legal analysis. In the end, Larry wrote: "Gail: Greta gets my vote for FTCA Summer Law Clerk GOAT (Greatest of All Time). See below."

Larry's appreciation for Greta's work and ability to anticipate legal questions continued for the entire summer. In addition to the memorandum analyzing application of discretionary exception function to defendant in malicious prosecution case, she worked on three more assignments for Larry and the trial team. Specifically, she -

1. Researched to what extent absolute prosecutorial immunity applied to conduct of six defendants in malicious prosecution case arising out of healthcare fraud investigation. Reviewed prosecution team's timeline. Created chart and wrote memorandum applying case law to facts in light of Fourth Circuit opinion.

2. Reviewed Office of Professional Responsibility Report and attachments and consulted about implications of findings on plaintiff's claims.

3. Drafted *Daubert* motion to exclude testimony of pharmaceutical expert related to healthcare fraud case.

As to each, Larry raved. He reveled in his engagement with Greta and her co-clerk and playfully referred to them as "Team Brain." He even remarked, at their addition to the trial team: "Yaaay! Our defense just got much stronger." Larry often complimented Greta's work. When she turned in her *Daubert* motion to exclude an expert's testimony, he said: "Thanks[,] Greta. Another outstanding job!" Additionally, before taking the deposition of the subject of Greta's motion, Larry emailed: "Hi[,] Greta, We probably don't need to take the deposition of XXXXXX (I expect your *Daubert* motion will exclude him) but my team wanted to take it out of abundance of caution."

In a team-wide email, Greta discussed her findings as to absolute prosecutorial immunity, and Larry stated: "Good stuff, Greta," and adopted her research and finding, after challenging her analysis in additional questions. Greta, confident in her work, held steady. As the summer ended, Larry emailed that he was "[h]aving fun thanks to . . . curious young people examining and enjoying the gladiatorial spectacle." Even after Greta returned to law school, he remained in touch and even shared the final version of a motion for summary where he highlighted: "[Y]ou'll notice much of your good work in there."

As is evident, Greta contributed substantially to United States' defense of this multi-million case. I enjoyed reading the emails between Larry, Greta, and the trial team. Increasingly, Larry depended on Greta's work and even included her in a contentious virtual deposition. Her assignments grew more complicated as she plumbed the depths of the presented issues and Larry appreciated her thoroughness and willingness to think outside of the box and construct novel approaches.

I would be remiss if I did not mention Greta's exceptional interpersonal skills. From the submission of her application, she was very professional, pleasant, considerate, and mannerly. Our interview lasted nearly two hours and we got along famously. Although our program is hybrid, Greta took advantage of coming into the office on her designated days and sometimes extra ones. Larry preferred meeting her and her co-clerk in person and he enjoyed their conversations. He even attended a lunch to establish a rapport with them and another law clerk. Greta "was all in" during her summer with us and she was a favorite among the entire class. When I asked for a document with all clerk birthdays, Greta created a poster featuring each clerk's picture, birthday, and even a graphic of each astrological sign to hang in the law clerk room to make sure that I would not forget them. I did not.

Greta has no sense of entitlement but instead is grateful for every opportunity big or small. Unlike many of her peers, she knows how to write and send a handwritten note of thanks, and occasional holiday card. While in town visiting during Christmas 2022, she made sure that we would meet during the season. It was a very sweet gesture which I appreciated greatly She continues to remain in touch and I enjoy hearing about her school and clinical work during the school year. Of note, she and her classmates have an ongoing chat where they exchange texts throughout the year. This kind of connectedness is rare and Greta relishes her relationships with each of her classmates.

Your Honor, I am a big fan of Greta. Having clerked for three years for a federal judge here in Washington, D.C., I understand the inner workings of chambers. Greta would become an invaluable, hard-working member of your staff. Her natural curiosity would compel her to take on each case or
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/ /
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project enthusiastically and thank you for the opportunity to tackle the factual and legal issues presented. I hope this letter provides insights as to why I recommend her highly. If you have any further questions or concerns, please do not hesitate. I will gladly continue the rave. I can be reached at gail.k.johnson@usdoj.gov or 301-509-2989 (personal cellphone).

Yours sincerely,

Gail K. Johnson
Supervisory Trial Counsel and Law Clerk Coordinator
Torts Branch, Civil Division

New York University
A private university in the public service

School of Law
40 Washington Square South, Room 308C
New York, NY 10012-1099

Helen Hershkoff
Herbert M. and Svetlana Wachtell Professor of Constitutional Law and Civil Liberties
Co-Director, The Arthur Garfield Hays Civil Liberties Program

Telephone: (212) 998-6285
Fax: (212) 995-4760
Email: helen.hershkoff@nyu.edu

June 5, 2023

Dear Judge:

It is a pleasure to recommend Greta Chen for a judicial clerkship with you following her graduation from New York University School of Law in May 2024. Greta was my student and also worked as my Research Assistant, and I have a strong sense of her aptitude, character, and skills. I believe she would be an excellent judicial clerk.

I met Greta her first year at NYU when she was a student in my required course in Civil Procedure. I taught the course via Zoom and by hosting additional office hours and other informal sessions, was able to get to know those students who made use of these opportunities. Greta was among them. She is engaged, curious, and public spirited, and her answers to the questions on the final examination showed strong powers of analysis and an excellent mastery of procedural doctrine.

Based on her academic performance, I invited Greta to work as a part-time summer Research Assistant (I would have been happy to hire her as a Teaching Assistant, as well, but she was already committed to other activities). As an RA, Greta helped to update portions of volume 14 of Wright & Miller's Federal Practice and Procedure, focusing on recent developments involving the United States as a plaintiff. Some of the material was familiar (for example, pleading requirements under statutes such as the False Claims Act), but much of it was not (for example, relator standing and when the United States can litigate on behalf of individuals). Greta undertook this research while working full-time at the Department of Justice in Washington, DC, in the Federal Tort Claims Act division, and she was able to manage her time well and meet all of my deadlines. She showed herself to be precise, comprehensive, and reliable in her research, and I have no doubt that these skills would serve her well as a judicial clerk.

Greta has contributed to the Law School and broader community in many important ways. In particular, she volunteers with the Suspension Representation Project, representing NYC public school students at their suspension hearings. Indeed, she was selected to serve as a case manager, and in that role she evaluates each intake and determines whether to assign the case internally to an NYU student or to refer the client to another organization. The work is demanding; during the 2022–2023 academic year, the Project placed more than 80 cases with consulting attorneys from The Legal Aid Society and other groups as needed. She also serves as Co-Chair of the Asian-Pacific American Law Students Association, and in that position

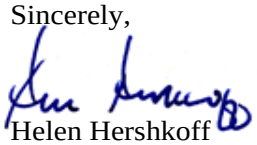
spearheaded fundraising, created the annual budget, and represented APALSA at meetings with the Law School administration and other student groups. Greta also is a member of the Law Review. These positions require maturity, commitment, and common sense—qualities that Greta has in abundance and would serve her well as a judicial clerk. I add that she is analytically sharp, detail-oriented, openminded, and energetic.

Greta grew up in Alabama, the child of Asian American immigrants. She has told me that her family experiences profoundly shaped her views of the law and of the importance of courts. She also gained important professional experience while in Alabama, interning at various law firms in Birmingham over the three summers before entering NYU. She is skilled at navigating diverse groups and enjoys working as part of a team (but also is independent and self-motivated). In particular, she is an active listener, seeks to find common ground, and attempts to reconcile opposing perspectives while remaining authentic.

In short, I recommend Greta with enthusiasm—her intelligence, collegiality, writing ability, and commitment would, in my view, make her an excellent judicial clerk. I would be happy to answer any questions that you might have.

Thank you for your consideration.

Sincerely,



Helen Hershkoff

NYU | LAW

KENJI YOSHINO
Chief Justice Earl Warren Professor of Constitutional Law
Director of the Center for Diversity, Inclusion, and Belonging

School of Law
40 Washington Square South, 501
New York, New York 10012-1099

P: 212 998-6421
F: 212 995-3662

kenji.yoshino@nyu.edu

May 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

RE: Greta Chen, NYU Law '24

Dear Judge Walker:

It is a great pleasure to recommend Greta Chen, a member of NYU School of Law's Class of 2024, for a clerkship in your chambers. Greta took my Constitutional Law class in the fall of 2022. She also served as my research assistant in the 2022-23 academic year. I therefore feel I know her well and am confident in giving her my strongest recommendation.

Students usually take a course with me before serving as my research assistant. In Greta's case the order was reversed. In 2022, NYU implemented a Clerkship Diversity Program that feeds high-potential students into research assistantships with professors. The goal of the program is to support students typically underrepresented in the clerkship process. Greta beat out a highly competitive field to land a research assistant position with me. I am deeply grateful to the program for bringing her into my orbit.

In her personal statement, Greta wrote: "As a queer, Asian-American woman from the Deep South, I am constantly reminded of the power that lies in granting access to spaces that were historically designed to exclude. . . . I am applying to NYU's Clerkship Diversity Program in part because I believe deeply in the importance of representation at the highest levels of the legal profession." She expressed her interest in working on LGBTQ rights, which is one of my fields of specialty.

For the past year, Greta has worked closely with me on a project on so-called "trans-first" jurisdictions. I began this project some years ago, but put it on hiatus to finish a book on a separate topic. It's no exaggeration to say that Greta revived the project through her keen intellect and boundless energy. She functioned at the level of a junior colleague to bring it to a new level of sophistication.

This piece looks at jurisdictions that protect trans-rights more than they do gay rights. Iran, for instance, has state-subsidized gender affirmation surgeries for transgender individuals alongside the death penalty for same-sex sexual conduct. My article argues that we do not see this combination of "pro-trans, anti-gay" positions in U.S. discourse. This is particularly notable because the other permutations are robustly represented—pro-LGBT, anti-LGBT, and "pro-gay, anti-trans" (as espoused by so-called trans-exclusionary radical feminists). The paper argues that the "pro-trans, anti-gay" position is missing because it can only exist in jurisdictions with deeply entrenched sex-stereotyping. It contends that in Iranian society, it is much less subversive for a trans individual to transition and then fade into society as a member of a different sex than it is for a gay individual to engage in a public display of affection with a person of the same sex. The paper concludes by looking at aspects of domestic jurisprudence that protect trans individuals only to the extent that they "code" as stereotypes of the post-transition gender. It argues that this form of protection is unduly limited and regressive, as it is a symptom of enduring sex stereotyping.

Greta was a crackerjack interlocutor on every dimension of the project. One of the challenging aspects of this piece was that it required work at many different levels—including the theoretical, comparative, and doctrinal ones. Greta shone in each of the dimensions. On the theory side, she pressed me hard on the issue of how I was defining "pro-trans" jurisdictions, noting that the countries I was examining did not protect trans people in any sense other than allowing them to transition. It was not only an important descriptive point, but also one that ended up advancing the central argument of the paper. On the comparative side, she vastly deepened my knowledge of the societies I was examining. My main case studies were Iran and Japan, and she was able to scour the scholarly literature to find sources that illuminated the different ways in which trans identities are understood in those jurisdictions. Finally, on the doctrinal aspect of the paper, she canvassed an enormous array of U.S. cases and coded them according to whether they protected trans individuals in a regressive or progressive way.

Kenji Yoshino - kenji.yoshino@nyu.edu - 212-998-6421

In all of this work, Greta excelled on two tracks. She is a big conceptual thinker. As the poet John Hollander once said, she is good at giving "her belief and her disbelief, each when the other not necessary." At the same time, she was extremely meticulous and detail-oriented. She is a superb line editor and she Bluebooks like nothing you have ever seen. Her ability to do both conceptual and detail-oriented work would make her, in my view, an invaluable clerk.

Greta is also a thoroughly admirable person. A few qualities bear particular note here. First, Greta is tenacious. Based on her stellar work for me, I know we were both disappointed in her grade in my Constitutional Law class (a B-plus). However, Greta never let her grade affect her confidence or passion for the field. If anything, she redoubled her energies in addressing the constitutional law aspects of my paper. Second, Greta is public-spirited. Many LGBTQ students I have mentored from jurisdictions inhospitable to their rights breathe a sigh of relief when they land in New York City and never leave again. Even though her immediate family has moved away from Alabama, Greta feels that she needs to return at some point to the South to "fight the good fight." I have come to see that she will always run toward an important fight rather than away from it, thinking less of herself than of the folks she might leave behind. Finally, Greta is generous. I noted in my Constitutional Law class that she was unusually quick to see the good in her peers. More broadly, I have seen her extend herself—both on my project and beyond—to seek to understand her ideological opponents. She says she developed this quality growing up as an outsider in the South. Yet I also view it simply as an individual virtue—her first instinct is to humanize rather than to demonize.

For all these reasons, I think Greta will be "one to watch" for years to come. I expect great things from her, and know she will exceed even my high expectations.

If I were you, I would not hesitate!

Sincerely,

Kenji Yoshino

Kenji Yoshino - kenji.yoshino@nyu.edu - 212-998-6421

GRETA CHEN

801 15th Street S, Apt 617, Arlington, VA 22202 • (205) 238-9352 • greta.chen@nyu.edu

WRITING SAMPLE

The attached writing sample is a motion to exclude expert testimony that I drafted during my summer 2022 internship at the Federal Tort Claims Act Section of the Department of Justice. I conducted the research myself, and the only document available for citation was the expert witness declaration. This motion has not been reviewed or edited by any third party. I obtained permission from my supervising attorney to use this sample. Some names and other identifying information have been changed.

DEFENDANT UNITED STATES OF AMERICA'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO EXCLUDE PLAINTIFF'S EXPERT JANE FOSTER

Defendant United States of America moves to exclude Plaintiff's proposed expert, Jane Foster, under Rules 403 and 702 of the Federal Rules of Evidence, *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993), *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999), and other applicable case law. The majority of Dr. Foster's report falls within the scope of common knowledge. Additionally, her testimony on pharmaceutical industry standards is irrelevant to Plaintiff's allegations of constitutional rights violations under state and federal law. Finally, Dr. Foster's proposed opinions regarding pharmacy laws and regulations constitute legal conclusions or subjects on which no expert testimony is necessary or allowable.

FACTUAL BACKGROUND

Plaintiff Reddy Vijay Annappareddy alleges that, as a result of the federal government's use of flawed inventory analyses and destruction of relevant evidence during the course of its Medicaid fraud prosecution, his rights were violated under the federal Constitution and Maryland law. *See Annappareddy v. Pascale*, 996 F.3d 120, 126 (4th Cir. Apr. 26, 2021). At the time of the investigation and prosecution, Annappareddy was the owner of Pharmacare, a pharmacy chain in Maryland and nearby states. *Id.*

On June 20, 2022, Plaintiff submitted an expert report from Dr. Jane Foster, a Professor Emeritus of Pharmacology at the University of Virginia. *See* Expert Declaration of Jane Foster [hereinafter Foster Decl.]. Dr. Foster's stated expertise is in the "pharmacy industry" and "standards of care for the pharmacy profession." Foster Decl. ¶ 1, 6.

LEGAL STANDARD

Federal Rule of Evidence 702 governs the admissibility of expert testimony, requiring that (1) the expert's scientific, technical, or other specialized knowledge helps the trier of fact

understand the evidence or determine a fact in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of reliable principles and methods; and (4) the expert reliably applies the principles and methods to the facts of the case. Fed. R. Evid. 702(a)–(d). According to the Supreme Court, Rule 702 imposes an obligation upon trial courts to ensure the reliability and relevancy of all expert testimony, scientific or not. *Kumho Tire*, 526 U.S. at 152.

The party offering the expert testimony bears the burden of establishing reliability and helpfulness. *United States v. Frazier*, 387 F.3d 1244, 1260 (11th Cir. 2004); *see also Bourjaily v. United States*, 483 U.S. 171, 175 (1987) (holding that offering party has burden of proving that pertinent admissibility requirements are met by a preponderance of evidence).

ARGUMENT

I. Dr. Foster's proposed testimony in Sections A, B, and C of her report is within the common knowledge of the trier of fact or otherwise unhelpful.

Federal Rule of Evidence 702 allows expert testimony only "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702(a). To be sufficiently helpful to warrant admission, the expert's testimony must go beyond the common knowledge and experience of the lay juror. *United States v. Dorsey*, 45 F.3d 809, 814 (4th Cir. 1995); *Kopf v. Skyrm*, 993 F.2d 374, 377 (4th Cir. 1993). "While the fit between an expert's specialized knowledge and experience and the issues before the court need not be exact . . . an expert's opinion is helpful to the trier of fact, and therefore relevant under Rule 702, 'only to the extent the expert draws on some special skill, knowledge or experience to formulate that opinion.'" *Shreve v. Sears, Roebuck & Co.*, 166 F. Supp. 2d 378, 392–93 (D. Md. 2001) (quoting *Ancho v. Pentek Corp.*, 157 F.3d 512, 518 (7th Cir. 1998)).

Dr. Foster's proposed opinions in sections A, B, and C of her report fall within the common knowledge of the layperson. In section A, Dr. Foster explains the importance of medication adherence for patients' health outcomes, which does not require any specialized knowledge or experience to understand. *See* Foster Decl. ¶¶ 9–13. Because the potential harms of non-adherence are easily understood without expert explanation, this Court should exclude these opinions. *See, e.g.*, *United States v. Lespier*, 725 F.3d 437, 449 (4th Cir. 2013) (excluding testimony regarding effects of sleep deprivation because such effects were readily comprehensible). The Fourth Circuit in *Scinto v. Stansberry* found that expert testimony was not required to demonstrate that a doctor's refusal to provide insulin to treat a prisoner's diabetes was an objectively serious deprivation because a jury could, without aid, understand the risks of failing to provide insulin to a diabetic. 841 F.3d 219, 230 (4th Cir. 2016). Likewise, Dr. Foster's examples describing the consequences of failing to take medication as prescribed for various medical conditions are a matter of common sense and would be unhelpful to the fact finder.

Dr. Foster's proposed testimony in sections B and C on the use of automatic refills and medication delivery services to improve medication adherence is similarly unhelpful. *See* Foster Decl. ¶¶ 14–23. The average layperson is familiar with how automatic refills work and their advantages, having encountered that service in everyday life. Dr. Foster is merely stating the obvious, and these opinions should be excluded. *See, e.g.*, *Persinger v. Norfolk & W. Ry. Co.*, 920 F.2d 1185, 1188 (4th Cir. 1990) (determining that testimony regarding the amount of weight safe for a person to lift was not helpful to jury); *Scott v. Sears, Roebuck & Co.*, 789 F.2d 1052, 1055 (4th Cir. 1986) (finding that admission of testimony that higher, nearer section of curb hid displaced, further section from sight and that persons wearing heels tend to avoid walking on

grates was erroneous). Even if the fact finder lacks firsthand knowledge of the pharmaceutical services discussed, these services are easy to understand and do not require an expert for their explanation.

Finally, while Dr. Foster's proposed testimony in sections D through F on prescription processing, claim reversal, and reverse distribution covers less familiar subject matter, the fact finder is nonetheless capable of independently comprehending how these duties and processes work. *See* Foster Decl. ¶¶ 24–38. "When laypersons are just 'as capable of comprehending the primary facts and of drawing correct conclusions from them' as are experts, expert testimony may properly be excluded." *Scinto*, 841 F.3d at 230 (quoting *Salem v. U.S. Lines Co.*, 370 U.S. 31, 35 (1962)). Here, the fact finder can, unaided by expert testimony, rely on common sense and experience to understand a pharmacy's duties and operations under the applicable law. *Compare Mod. Remodeling, Inc. v. Tripod Holdings, LLC*, No. CV CCB-19-1397, 2021 WL 5234698, at *4 (D. Md. Nov. 9, 2021) (finding that witness who describes a laptop reset to factory settings and a cloud-based storage system need not be an expert because jury is capable of comprehending both), *with United States v. Offill*, 666 F.3d 168, 175 (4th Cir. 2011) (allowing expert testimony on general operation of securities law to assist the jury because of its intricacy and complexity).

Furthermore, even if the pharmaceutical industry practices described by Dr. Foster are not common knowledge, her opinions are unhelpful to the fact finder because she does not engage in any technical analysis but rather relies only on her "experience, education, and training." Foster Decl. ¶ 6. Dr. Foster does not explain what industry literature—if any—she reviewed to write her report, nor has she ever worked as a pharmacist or pharmacy law professor in Maryland. To the extent that Dr. Foster has not applied her knowledge and expertise to the

facts of this case, her testimony in sections D through F of the report should be excluded. *See Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) ("[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert."). Dr. Foster has not articulated any reliable methodology for how she reached her conclusions, and her opinions add nothing beyond what the parties and the Court may ordinarily do. As such, Plaintiff has failed to allege, much less establish, that Dr. Foster used specialized, reliable principles and methods to support her statements in this case as required by Federal Rule of Evidence 702.

II. Dr. Foster's proposed testimony is irrelevant and would not assist this Court in reaching a decision because it is not tied to the facts of this case.

The "helpfulness" standard of Rule 702 requires a valid connection to the pertinent inquiry as a precondition to admissibility. *Daubert*, 509 U.S. at 591–92; *see also Adell Plastics, Inc. v. Mt. Hawley Ins. Co.*, No. CV JKB-17-00252, 2019 WL 2524916, at *1 (D. Md. June 19, 2019) ("To be relevant, or helpful, an expert opinion must have a valid connection to the pertinent inquiry." (citing *Belville v. Ford Motor Co.*, 919 F.3d 224, 232 (4th Cir. 2019))). Expert testimony which does not relate to any issue in the case at hand is not relevant and thus is nonhelpful. *Daubert*, 509 U.S. at 591.

Plaintiff's expert declaration for Dr. Foster states that she will "provide a report describing certain aspects of the pharmacy industry generally to assist the trier of fact in this case in understanding particularly relevant background facts about the industry." Foster Decl. ¶ 1. However, Dr. Foster's proffered testimony is irrelevant to whether the prosecution team acted maliciously in creating or destroying the evidence used to indict and convict Annappareddy. In fact, Dr. Foster's report does not address the conduct of the investigators or prosecutors at all, so

her analysis is not helpful in resolving Annappareddy's federal constitutional or state-law claims. Furthermore, Dr. Foster's testimony lacks connection even to the case that gave rise to this action. In the original prosecution, it was Annappareddy's intentional commission of healthcare fraud, not his negligence or malpractice, that was the source of the dispute. Because Dr. Foster's opinions on standards of care in the pharmaceutical industry lack relevance to the legal and factual issues at hand, they should be excluded. *See, e.g.*, *United States v. Powers*, 59 F.3d 1460, 1472–73 (4th Cir. 1995) (excluding expert testimony that defendant did not demonstrate psychological profile of pedophile where defendant offered no evidence linking non-proclivity for pedophilia with non-proclivity for incest abuse, with which he was charged); *Jones v. Allen*, No. CV PX-15-1173, 2016 WL 9443772, at *5–7 (D. Md. Oct. 24, 2016) (excluding expert testimony on officers' conduct prior to and after employing force in question in excessive force case because it did not assist trier of fact and was irrelevant).

In addition to failing to assist the trier of fact in this case, Dr. Foster's proposed testimony also violates Federal Rule of Evidence 403. Rule 403 provides that evidence is inadmissible, despite relevance, if the evidence is prejudicial, confusing, misleading, or wastes time. Fed. R. Evid. 403. Here, admitting Dr. Foster's proposed testimony, which essentially details standard operations for pharmacies, would introduce collateral issues and unnecessarily prolong the trial. Moreover, Dr. Foster does not attempt to apply these standards specifically to Annappareddy's management of Pharmacare, and thus her testimony adds little probative value. Because nothing in the proffered opinions connects to Annappareddy's claims, they should be excluded under Rule 403. *Cf. United States v. Iskander.*, 407 F.3d 232, 237–39 (4th Cir. 2005) (excluding expert testimony about unclaimed depreciation deductions for hotels owned by defendant's corporation because such evidence was irrelevant and potentially confusing in prosecution for tax evasion of

personal income taxes); *United States v. Ging-Hwang Tsoa*, 592 F. App'x 153, 155–56 (4th Cir. 2014) (excluding expert opinions that failed to address defendant's state of mind in trial for bank fraud and conspiracy to commit bank fraud because admission would confuse the issues and mislead the jury); *Atkinson Warehousing & Distribution, Inc. v. Ecolab, Inc.*, 99 F. Supp. 2d 665, 666–67 (D. Md. 2000) (excluding evidence of alleged thefts by principal of plaintiff and evidence that son of principal mismanaged another business because such evidence was not germane to present suit regarding company's ability to manage warehouse). Finally, as discussed earlier, even if some of Dr. Foster's opinions are relevant, the judge as fact finder can review these background facts independently.

III. Dr. Foster's proposed testimony contains impermissible legal conclusions.

Expert testimony that states a legal standard or draws a legal conclusion is generally inadmissible. *United States v. Blair*, No. CR ELH-19-00410, 2021 WL 5040334, at *9 (D. Md. Oct. 29, 2021) (citing *Adalman v. Baker, Watts & Co.*, 807 F.2d 359, 368 (4th Cir. 1986), *abrogated on other grounds by Pinter v. Dahl*, 486 U.S. 622 (1988)). Several of Dr. Foster's opinions describe the law and make assertions about whether certain pharmaceutical practices were legal under federal or state law and regulations during the relevant period. For example, she claims that neither federal law nor state law in Maryland, the District of Columbia, Pennsylvania, or North Carolina imposed any restrictions on automatic refills. Foster Decl. ¶¶ 16–21. Dr. Foster also draws conclusions about federal and state regulations on claim reversals under Medicare or Medicaid as well as conclusions about reverse distribution during the relevant period. *See* Foster Decl. ¶¶ 24–29, 37–38. As worded, these opinions constitute impermissible legal conclusions. *See United States v. McIver*, 460 F.3d 550, 562 (4th Cir. 2006) ("[O]pinion testimony that states a legal standard or draws a legal conclusion by applying law to the facts is

generally inadmissible."); *Burkhart v. Dickel*, No. CCB-12-3320, 2015 WL 9478193, at *4 (D. Md. Dec. 29, 2015) (excluding pure legal analysis, such as quotations from case law); *Peters v. Baltimore City Bd. of Sch. Comm'rs*, No. CIV. WMN-13-3114, 2014 WL 4187307 (D. Md. Aug. 21, 2014) (finding that expert's testimony citing statutes and case law interpreting those statutes constituted inadmissible legal conclusions).

Admitting such opinions usurps the fact finder's role by telling the judge what result to reach. Dr. Foster should not be able to testify as to the industry standards and state and federal regulations governing Pharmacare during the period in question because it would impermissibly empower her to evaluate the evidence and apply the law as she sees fit. *See, e.g., United States v. Mallory*, 988 F.3d 730, 741 (4th Cir. 2021) (excluding expert testimony on whether owner and employees of blood testing laboratory had reason to know what their legal obligations were); *Sun Yung Lee v. Zom Clarendon, L.P.*, 453 F. App'x 270, 278 (4th Cir. 2011) (excluding expert reports discussing whether easement could validly be created in deed of partial release, who had authority to create easement in such instrument, and whether fee simple owner's signature was required). Thus, all of Dr. Foster's opinions that involve questions of law should be excluded.

CONCLUSION

Plaintiff bears the burden of establishing the reliability and relevance of Jane Foster's testimony. At present, Plaintiff has not met that burden because Dr. Foster's expert report does not rely on any specialized knowledge or technical analysis. Additionally, the proffered testimony is not relevant to the alleged misconduct of the investigators and prosecutors or the original healthcare fraud charges. To the extent that Dr. Foster's testimony is relevant, it is more prejudicial than probative. Finally, many of Dr. Foster's opinions are merely legal conclusions

that are not appropriate for expert testimony. Thus, this Court should preclude Dr. Foster's testimony under Rules 403 and 702 of the Federal Rules of Evidence.

Applicant Details

First Name	**Miles**
Last Name	**Coll**
Citizenship Status	**U. S. Citizen**
Email Address	**mcoll@law.gwu.edu**
Address	**Address** Street **2400 M Street, NW** City **Washington** State/Territory **District of Columbia** Zip **20037** Country **United States**
Contact Phone Number	**858 395 3449**

Applicant Education

BA/BS From	**Loyola Marymount University**
Date of BA/BS	**May 2021**
JD/LLB From	**The George Washington University Law School** **https://www.law.gwu.edu/**
Date of JD/LLB	**May 1, 2024**
Class Rank	**Not yet ranked**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Van Vleck Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**Yes**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

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Sibay, Rami
sibayr@sec.gov
Mullin, Connor
Connor.Mullin@usdoj.gov

This applicant has certified that all data entered in this profile and any application documents are true and correct.

MILES COLL

2400 M St NW | Washington, D.C. | 858-395-3449 | mcoll@law.gwu.edu

June 15, 2023

The Honorable Jamar K. Walker

U.S. District Court for the Eastern District of Virginia

Walter E. Hoffman U.S. Courthouse

600 Granby Street

Norfolk, VA 23510

Dear Judge Walker:

I am a law student at The George Washington University Law School (GWU), and will be graduating in May 2024. I am writing to apply for a judicial clerkship with you for the 2024 term. I am enclosing a resume, writing samples, and my law school transcript. Enclosed as well are recommendations from Rami Sibay, Paul Crane, and Connor Mullin. Thank you for your consideration.

Sincerely,

Miles Coll

MILES COLL

2400 M St NW | Washington, D.C. | 858-395-3449 | mcoll@law.gwu.edu

EDUCATION

The George Washington University Law School — Washington, D.C.
Transfer Student, Juris Doctor Candidate — May 2024

- Activities: Van Vleck Moot Court
- Clubs: Antitrust Law Association (ALA); Anti-Corruption & Compliance Association (ACCA); Banking and Securities Law Society (BaSL)

American University Washington College of Law — Washington, D.C.
GPA: 3.48 — Attended, August 2021 - May 2022

- Finished in the top third of my class
- Graded onto the Administrative Law Review (ALR), the official journal of the American Bar Association

Loyola Marymount University — Los Angeles, CA
Bachelor of Arts in Political Science — May 2020

EXPERIENCE

U.S. Department of Justice (DOJ), Criminal Division (CRM), Public Integrity Section (PIN) — Washington, D.C.
Fall 2023
Intern

Judge Lydia Kay Griggsby, U.S. District Court of Maryland — Greenbelt, MD
Intern — May 2023 – August 2023

- Drafting opinions on civil procedure and contract questions unaddressed by the 4th Circuit
- Dissecting opinions and reviewing dockets with Judge Griggsby

U.S. Attorney for the District of Columbia (USADC), Criminal Division, Federal Major Crimes Section — Washington, D.C.
January 2023 – April 2023
Intern

- Drafted court-ready filings including sentencing memos and plea offers
- Researched novel legal issues arising out of USADC's unique jurisdiction as the only Office with both federal *and* local prosecutorial authority
- Participated in weekly debriefs with the entire Section

U.S. Department of Justice (DOJ), Tax Division (TAX), Civil Appeals Section — Washington, D.C.
Intern — September 2022 – December 2022

- Drafted briefs for upcoming cases in the D.C. Circuit Court of Appeals
- Researched case law and highly technical IRC provisions
- Mooted with attorneys who were preparing for upcoming oral arguments

American University Washington College of Law — Washington, D.C.
Research Assistant, Prof. Susan Carle — May 2022 – August 2022
Criminal Justice Clinic, American University Washington College of Law — Washington, D.C.
Dean's Fellow — May 2022 – August 2022

SKILLS AND INTERESTS

Enjoy running, physical fitness and San Diego sports fandom. Have done extensive travel through Europe and North America; parts of Southeast Asia and Latin America.

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G46383604
Date of Birth: 31-OCT

Date Issued: 03-JUN-2023

Record of: Miles A Coll

Page: 1

Student Level: Law
Admit Term: Fall 2022

Issued To: MILES COLL
MCOLL@LAW.GWU.EDU

REFNUM:5416357

Current College(s):Law School
Current Major(s): Law

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
NON-GW HISTORY:			
2021-2022	American University		
LAW 6202	Contracts	4.00	TR
LAW 6206	Torts	4.00	TR
LAW 6208	Property	4.00	TR
LAW 6210	Criminal Law	3.00	TR
LAW 6212	Civil Procedure	4.00	TR
LAW 6214	Constitutional Law I	4.00	TR
LAW 6216	Fundamentals Of Lawyering I	2.00	TR
LAW 6217	Fundamentals Of Lawyering II	2.00	TR
LAW 6470	Intellectual Property	2.00	TR
Transfer Hrs: 29.00			
Total Transfer Hrs: 29.00			
GEORGE WASHINGTON UNIVERSITY CREDIT:			
Fall 2022			
Law School			
Law			
LAW 6209	Legislation And Regulation Dooling	3.00	B+
LAW 6250	Corporations Roth	4.00	B+
LAW 6402	Antitrust Law Longwell	3.00	A-
LAW 6644	Moot Court - Van Vleck	1.00	CR
LAW 6668	Field Placement Mccoy	2.00	CR
LAW 6672	The Art Of Lawyering Simeone	2.00	B
Ehrs 15.00	GPA-Hrs 12.00	GPA	3.361
CUM 15.00	GPA-Hrs 12.00	GPA	3.361
Good Standing			
Spring 2023			
Law School			
Law			
LAW 6252	Securities Regulation	3.00	A-
LAW 6290	Banking Law	2.00	B
LAW 6360	Criminal Procedure	4.00	B-
LAW 6362	Adjudicatory Criminal Pro.	3.00	B+
LAW 6478	Licensing Ip Rights	2.00	B+
LAW 6667	Advanced Field Placement	0.00	CR
LAW 6668	Field Placement	1.00	CR
Ehrs 15.00	GPA-Hrs 14.00	GPA	3.167
CUM 30.00	GPA-Hrs 26.00	GPA	3.256
Good Standing			

********** CONTINUED ON NEXT COLUMN **********

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Summer 2023			
LAW 6218	Prof Responsibility & Ethics	2.00	----------
Credits In Progress:		2.00	
Fall 2023			
LAW 6232	Federal Courts	3.00	----------
LAW 6256	Mergers And Acquisitions	2.00	----------
LAW 6264	Securities Law Seminar	2.00	----------
LAW 6363	Role Of The Federal Prosecutor	2.00	----------
LAW 6382	First Amendment - Speech/Press	3.00	----------
LAW 6521	International Money Laundering	3.00	----------
Credits In Progress:		15.00	

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	30.00	26.00	84.67	3.256
TOTAL NON-GW HOURS	29.00	0.00	0.00	0.00
OVERALL	59.00	26.00	84.67	3.256

########## END OF DOCUMENT ##########

Katie Cloud
Interim University Registrar

This transcript processed and delivered by Parchment

COLL MILES A 5224772 10/31

06/08/22 1 OF 1

FALL 2021

LAW-501	CIVIL PROCEDURE	04.00	A-	14.80
LAW-504	CONTRACTS	04.00	A-	14.80
LAW-516	LEGAL RESEARCH & WRITING I	02.00	B	06.00
LAW-522	TORTS	04.00	A-	14.80

LAW SEM SUM: 14.00HRS ATT 14.00HRS ERND 50.40QP 3.60GPA

SPRING 2022

LAW-503	CONSTITUTIONAL LAW	04.00	B+	13.20
LAW-507	CRIMINAL LAW	03.00	A-	11.10
LAW-517	LEGAL RESEARCH & WRITING II	02.00	B+	06.60
LAW-518	PROPERTY	04.00	B+	13.20
LAW-670	INTELLECTUAL PROPERTY LAW	02.00	B+	06.60

LAW SEM SUM: 15.00HRS ATT 15.00HRS ERND 50.70QP 3.38GPA

LAW CUM SUM: 29.00HRS ATT 29.00HRS ERND 101.10QP 3.48GPA

END OF TRANSCRIPT

June 22, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Miles Coll for a clerkship in your Chambers. I am currently an attorney in the Appellate Section of the Criminal Division of the Department of Justice, and I had the pleasure of having Miles as a student in my Criminal Adjudication course at George Washington University, where I serve as an adjunct law professor. I believe Miles would be a great addition to your Chambers.

Let me begin with Miles's greatest strengths: his willingness to learn, ask questions, and work hard. Based on my observations during class and in discussions with him outside of class, Miles struck me as a very earnest, dedicated, and committed student. He is especially interested in public service and has demonstrated significant initiative in pursuing those dreams. In addition, he consistently asked thoughtful and thought-provoking questions during class, was always respectful during class discussion, and remained open-minded and eager to learn. I think Miles would thrive discussing cases with his fellow law clerks and would mesh well with everyone in and around Chambers.

Miles performed well on my exam, receiving a B+ in a class of about 30 students full of high achievers. Despite challenging time constraints, his answers correctly identified the core issues, accurately analyzed the main legal claims, and was not unnecessarily distracted by red herrings or superfluous explanation. I have no doubt that Miles will only continue to improve as he sharpens his legal skills through various internships and externships.

I hope you will give Miles a close look, as I think he would make a great law clerk. If there is anything I can do to further aid your decision-making process, please do not hesitate to let me know.

Sincerely,

Paul T. Crane

Professorial Lecturer in Law
The George Washington University Law School
ptcrane@law.gwu.edu
434-825-7677 (cell)

June 13, 2023

Dear Judge:

I am writing to sing the praises of Miles Coll, who interned with us in the Spring of 2023 at the U.S. Attorney's Office. He worked in the Federal Major Crimes section of our Criminal Division, where I serve as an AUSA (and intern coordinator). His research and writing abilities were the strongest of any intern in my four years in the office. He produced polished and compelling written work product that would have been good for a young lawyer, let alone a law student, on complicated areas of law from conspiracy to obstruction. Miles is detail-oriented, diligent, and professional. He was always eager to learn, ask questions, and come to court. His inside knowledge of the workings of federal court will give him a leg up on other candidates.

Before joining the U.S. Attorney's Office, I practiced for a decade at Akin Gump. I serve as an Adjunct Professor at Georgetown Law. I can say without reservation that Miles is the sort of candidate we looked for at the firm, in government service, and in class. He will be an asset to your chambers. We were lucky to have him.

Sincerely,

Connor Mullin

Assistant U.S. Attorney for the District of Columbia

Adjunct Professor, Georgetown Law

Connor Mullin - Connor.Mullin@usdoj.gov

The following is a statement of facts I drafted while working at the Department of Justice's Tax Division, in the Appellate Section. The draft was later used in a brief that was submitted in the US Court of Appeals for the Second Circuit. The Department would only permit me to use the sample if I redacted the petitioning taxpayers' names.

The issue on appeal was whether dismissal was categorically justified if an IRS officer improperly referred a taxpayer to the Justice Department while the same taxpayer's installment offer was still pending. The Eastern District of New York concluded that an improper referral did not necessarily preclude a case from moving forward.

STATEMENT OF THE CASE

A. Background

1. Taxpayers' original joint-filing and the Treasury Department's liability assessment

On October 15, 2008, John Doe and Jane Doe ("Taxpayers") filed their 2007 joint income tax return, reporting a $91,945.00 tax liability. *See* Doc. No. 32 at 53; *also see* Doc. No. 1 at 6 (providing all of the assessments made against Taxpayers between 2008 and 2016). However, Taxpayers did not pay the tax reported on the return. *See id.* On November 3, 2008, the Secretary of the Treasury Department ("Treasury") delegated an Internal Revenue Service ("IRS") representative to make an assessment against Taxpayers for federal income taxes, penalties, and interest. *See* Doc. No. 32 at 54. The delegate concluded Taxpayers owed $112,324.18. *See id.*

After the assessment, Taxpayers did not submit anything to the IRS for nearly ten years. *See id.*

2. Taxpayers' reemergence in 2017

On December 7, 2017, Taxpayers submitted an installment agreement request under 26 U.S.C. § 6159. *See id.* Taxpayers proposed paying $361 a month. *See id.* That same day, two transactions

appeared in Taxpayers' IRS accounts. *See id* at 55. One of the transactions mistakenly said Taxpayers' proposal was "granted and active."[1] *See id*. However, the IRS never sent Taxpayers a written notice accepting Taxpayers' settlement agreement proposal. *See id*. Still, Taxpayers proceeded to make six voluntary $361 payments. *See id*. In August 2018, Taxpayers stopped making payments after an IRS officer visited Taxpayers at their home.[2] *See* Doc. No. 32 at 54.

At some unclear time late in 2018, but before October 30, 2018, the IRS referred Taxpayers' case to the Department of Justice ("DOJ"). *See id*. It *is* clear, though, that on September 14, 2018, an entry appeared on Taxpayers' IRS account, stating, "Legal suit pending." *See id*. Moreover, an IRS form dated September 19, 2018 and titled "Request for Installment Agreement – Independent Review Prior to Rejection," suggested the IRS was rejecting Taxpayers' proposal. *See id*.

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[1] The first transaction stated, "Request for installment agreement pending"; the second transaction stated "Installment agreement granted and active." *Id*.

[2] The IRS Officer also left the Taxpayers written note stating, "Levy. Suit to Reduce Claim to Judgment. In process." *See id*; Doc. No. 23 at 27.

Finally, on October 30, 2018, the IRS sent Taxpayers a letter formally rejecting their request for an installment agreement.[3] *See id*.

The letter also informed Taxpayers they only had until November 29, 2018 to appeal the rejection. *See id*. Taxpayers failed to appeal. *See* Doc No. 32 at 55.

B. The suit to reduce the federal income tax liabilities to judgment

On November 30, 2018, the Government brought suit in the District Court for the Eastern District of New York, seeking to reduce the taxpayers' 2007 federal income tax liabilities to judgment. *See id*; Doc. No. 1 at 5-7. Both parties moved for summary judgment, with Taxpayers asserting that the Government's collection action was barred because the IRS improperly referred their case to the DOJ before the taxpayers' request was formally rejected on October 30, 2018. *See* Doc. No. 32 at 56; Doc. No. 26 at 7-11. The District Court granted summary judgment to the Government, holding that the IRS' referral while

[3] For more on the IRS' justification for denying the taxpayers' proposal and why, " 'in the alternative …' the October 30 letter constituted 'a formal notice,'" *see id*; Doc. No 23 at 29.

Taxpayers' installment agreement request was pending did not bar the Government's action. *See id* at 63.

Specifically, the District Court concluded that 26 U.S.C. § 6331(k) was only concerned with, "the timing of the *commencement of a court proceeding*, not the timing of the referral itself." *Id* at 60, *also see* 63 (emphasis added). Taxpayers argued that 26 C.F.R. § 301.6331-4(b)(2) unambiguously prohibited the IRS from making commencement referrals to the DOJ before the IRS notified taxpayers with a formal rejection. *See id* at 59; *also see* Doc. No. 14-1 at 21. The District Court disagreed, emphasizing that the dispute did not hinge on whether the "IRS's referral of the action to the DOJ was untimely," but instead asked "whether the IRS's concededly premature referral serves to bar this suit." Doc. No. 32 at 60.

Carrying out this inquiry, the District Court held that Taxpayers failed to establish that 26 C.F.R. § 301.6331-4(b)(2) expressly proscribed *per se* liability under 26 U.S.C. § 6331(k). *See id* at 61, 63. The Court explained that regulations, "may not serve to modify a statute," and instead "must … be viewed 'in the context of the statute they are designed to explicate.'" *Id* at 60-61 (citing *Koshland v. Helvering*, 298

U.S. 441, 447, 56 S.Ct. 767, 770, 80 L.Ed. 1268 (1936)); (citing *Iglesias v. United States*, 848 F.2d 362, 367 (2d. Cir. 1988)). Yet, the Court noted, 26 U.S.C. § 6331(k) "makes no [express] mention of IRS referrals." *Id* at 61; *also see* 63. Necessarily then, by contending that § 301.6331-4(b)(2) barred collection actions "exclusively because of … technical, nonprejudicial [errors] on the part of the government," Taxpayers were asking the Court to "add to the statute 'something which is not there.'" *Id* at 61 (citing *United States v. Calamaro*, 354 U.S. 351, 359, 77 S.Ct. 1138, 1143, 1 L.Ed.2d 1394 (1957)).

The Court also held that Taxpayers' strict reading of § 301.63314(b)(2) went against "the overarching statutory context" of 26 U.S.C. §
6331(k)'s passage. *Id* at 63. Taxpayers asked the Court to interpret § 301.6331-4(b)(2) as a bar on *all* collection cases improperly referred to the DOJ by the IRS before Taxpayers received a formal rejection. *See id* at 62; *also see* Doc. No. 26 at 41, 49-50. Yet Congress passed 26 U.S.C. § 6331(k) solely to ensure taxpayers who took "affirmative steps to satisfy their outstanding tax liabilities [were] entitled to robust, procedural safeguards prior to IRS action." Doc. No. 32 at 62. In this case, however, "the IRS's premature referral did not practically deprive

[Taxpayers] of any such safeguards."[4] *Id*. Therefore, Taxpayers' construction of § 301.6331-4(b)(2) was "plainly 'out of harmony with'" the statutory context of 26 U.S.C. § 6331(k)'s passage. *Id*.

Thus, the Court denied Taxpayers' motion for summary judgment. Doc. *See id* at 63. The Court ruled that Taxpayers failed to materially dispute the Government's contention that 26 U.S.C. § 6331(k) only concerned the timing of levies, and therefore failed to establish that the IRS's premature referral barred the Government's action. *See id*. Since both motions were solely disputing the scope of 26 U.S.C. § 6331(k), the Court entered judgment in favor of the Government.[5] *See* Doc. No. 32 at 63. On June 2, 2022, the Court officially filed its order granting judgment, entering $112,324.18 for the government, plus statutory

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[4] For a more complete examination of the safeguards afforded to the Taxpayers, *see id* at 53 (emphasizing that the proposal was "indisputably reviewed"; the Taxpayers received a "detailed, written notice"; the Taxpayers were given "30 [extra] days to appeal"; and, "most critically," the Taxpayers did not appeal "until after the … window expired and levy was no longer prohibited.")

[5] For more on the issues that were left uncontested, *see id* at 61 (noting that Taxpayers "did not contest [the Government's] stated rationale" for the action, nor that they "suffered any harm" from the IRS's premature referral); *also see* Doc. No. 26 at 47-51.

additions and interest accruing from and after September 30, 2020. Doc. No. 33 at 64.

C. Taxpayers' Notice of Appeal

On July 19, 2022, Taxpayers filed a Notice of Appeal in the U.S. Court of Appeals for the Second Circuit. *See* Doc. No. 34 at 59. Taxpayers seek to reverse the District Court's denial of their Motion for Summary Judgment. *See id*.

The following is a memo I recently drafted in the U.S. Attorney's Office for the District of Columbia (USADC). At the time, the Government was charging the defendant with a separate crime, and holding the defendant's properly-seized phone as potential evidence. However, some time before trial, the Government learned the defendant attempted to erase the phone's information from a remote location. The Government could clearly charge the defendant with obstruction of justice under D.C. law. However, because of D.C.'s unique jurisdiction, I researched whether the Government *could also* charge the defendant with *federal* obstruction of justice.

The case law I found was limited, but on-point. I am including this sample because the USAA supervising the assignment told me he was extremely impressed with the work, and suggested I include it in future applications. The memo has not been edited by anyone else.

To: Paul Courtney

From: Miles Coll

Date: February 16, 2023

MEMORANDUM

I. Issue

Whether the government may charge a defendant with *federal* obstruction for interfering with a *state*-issued subpoena, even if the defendant did not have knowledge of the ongoing *federal* investigation?

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II. Synopsis

Unlikely. The United States District Court for the District of Columbia has held that the D.C. Superior Court is not a "court of the United States" under 18 U.S.C. § 1503. *United States v. Smith*, 729 F. Supp at 1385 (D.D.C. 1990) (citing *United States v. Regina*, 504 F. Supp. at 629, 631 (D. Md. 1980) (holding that the D.C. Superior Court was not a "court of the United States" under § 1503)). Moreover, the D.C. District Court held that § 1503's specific prohibitions limited the entire statute, including § 1503's catch-all provision in the second clause. *Id.* at 1382 – 83. Therefore, the Court held that an individual may only be charged under § 1503 if the defendant has the specific intent to obstruct a federal proceeding. *See id*.

III. Analysis

In *Smith*, the D.C. Metropolitan Police Department ("MPD") set up a series of sting operations, after investigating complaints that an officer ("the defendant") was "skim[ing]"

seized drugs and money during arrests. 729 F. Supp at 1381. During the second sting, the defendant seized 18 packets of government-manufactured cocaine while arresting an undercover MPD officer. *Id*. The defendant confirmed MPD's suspicions when he only turned in 15 of the 18 packets. *Id*. On this basis, the government charged the defendant with obstruction of justice under 18 U.S.C. § 1503 (along with two local charges). *Id*. at 1382. Specifically, the defendant was federally charged with "endeavor[ing] to … impede … the due administration of justice by breaching his duty as a police officer when he intentionally failed to preserve property that he had lawfully seized." *Id*. at 1383.

Under § 1503, an individual may be punished for obstruction of justice if the individual "corruptly … endeavors to … impede any … officer in or of any court of the United States … or officer who may be serving at any … proceeding … in the discharge of his duty … or corruptly … impedes, or endeavors to … impede, the due administration of justice." 18 U.S.C. § 1503. The Court separated the statute into "its two operative parts: 1) the specific prohibitions against endeavoring to … impede any … officer; and 2) the so-called 'omnibus' or 'catch-all' clause, prohibiting any endeavor to … impede 'the due administration of justice.'" *Smith*, 729 F. Supp at 1382 – 83.

The government contended that § 1503 did not carry an actual knowledge-requirement. *See id*. at 1385. The government conceded that the D.C. Superior Court did not satisfy § 1503's "court of the United States"-element. *Id*. (citing *Regina*, 504 F.Supp. at 629, 630).[1] However, § 1503's "judicial … proceeding"-requirement, the government argued, *only* limited § 1503's first clause, *rather than* the entire statute. *See id*. at 1383. Thus, the government could *also* seek a § 1503 conviction by showing the defendant "endeavor[ed] to … impede, the due administration of

[1] By leaving the government's concession undisputed, the Court also implicitly assumed *Regina* as the relevant precedent.

justice [*anywhere*]," *even if* the government could not show the defendant actually knew the specific, already-pending "proceeding" he was obstructing. *See id*. On this basis, that the defendant only knew the cocaine packets would be evidentiarily submitted in Superior Court at the time of the obstruction was irrelevant. *See id*. Instead, the government could meet its burden merely by showing the defendant's intent to obstruct *any* proceeding. *See id*.

The defendant argued that § 1503's "judicial … proceeding"-requirement limited the *entire* statute, and therefore not only burdened the government with establishing the defendant's general intent to obstruct, *but also* with establishing that the defendant *knowingly* obstructed some *specific*, *already-pending* proceeding. *Id.* at 1385. Based on the government's concession, the defendant argued the government could not meet that burden. *See id*. Since the three missing cocaine packets were initially only going to be evidentiarily submitted in a Superior Court proceeding, necessarily then, the defendant could only have *knowingly* obstructed a Superior Court proceeding (rather then *also* knowingly have obstructed a *District Court* proceeding). *See id.* Thus, the defendant could not have specifically intended to obstruct a § 1503 proceeding, because the defendant only knew he was obstructing a proceeding in a court that was not recognized by § 1503. *See id*.

The District Court rejected the government's § 1503 interpretation of the "judicial … proceeding"-requirement, and concluded it limited the entire statute, including the "endeavor[ed] to … impede, the due administration of justice"-provision. *See id*. (citing *United States v. Capo*, 791 F.2d 1054, 1070 (2nd Cir. 1986) (holding that "To obtain a conviction under this section, the government must show that there was a pending judicial proceeding … and the defendant knew of and sought to influence, impede or obstruct the judicial proceeding")). The Court emphasized that "[pending] judicial proceedings … at the time of [the] defendant's conduct is … a *sine qua*

non of a charge under Section 1503." *Id*. at 1385. Since the government couldn't establish the defendant intentionally obstructed a federal proceeding, the court dismissed the defendant's federal charge. *Id*. at 1387.

Applicant Details

First Name	**William**
Middle Initial	**Seth**
Last Name	**Cook**
Citizenship Status	**U. S. Citizen**
Email Address	**wscook@utexas.edu**
Address	**Address** Street **7004 Colony Park Dr** City **Austin** State/Territory **Texas** Zip **78724**
Contact Phone Number	**8177130574**

Applicant Education

BA/BS From	**University of Arkansas-Fayetteville**
Date of BA/BS	**May 2019**
JD/LLB From	**The University of Texas School of Law** **http://www.law.utexas.edu**
Date of JD/LLB	**May 6, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Texas Review of Litigation**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**Yes**

Specialized Work Experience

Specialized Work Experience **Appellate, Death Penalty, Habeas**

Recommenders

Sager, Lawrence
lsager@law.utexas.edu
512-232-1322
Steiker, Jordan
jsteiker@law.utexas.edu
512-232-1346
Davis, Hon. Tony
Judge_Tony_Davis@txwb.uscourts.gov
Bernell, Ben
ben.bernell@pillsburylaw.com
5125809631

This applicant has certified that all data entered in this profile and any application documents are true and correct.

William "Seth" Cook

(817) 713-0574 | wscook@utexas.edu | 7004 Colony Park Dr. Austin, Texas 78724

March 26th, 2023

The Honorable Judge Jamar Walker
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

Enclosed, please find my application for a clerkship in your chambers for the 2024-2025 term. I am a 3L at the University of Texas School of Law, graduating in May 2023. After graduation, I will clerk for Justice Debra H. Lehrmann on the Supreme Court of Texas. I am especially interested in your clerkship for several reasons. First, my wife's brother lives in the Virginia Beach area which initially led to my interest in clerking on the Eastern District of Virginia.

Second, this past semester I worked for Texas Law's Capital Punishment Clinic, representing a man named Tracy Beatty. After meeting Mr. Beatty on Texas's death row, a shift occurred in my career outlook. I realized that the patent and antitrust litigation I had done the previous summer would not provide the same meaning as my work for Mr. Beatty. In about two months, I worked on a state habeas petition, drafted significant portions of a Fifth Circuit brief, conducted juror and witness interviews, and researched arguments for a cert petition. Unfortunately, in November, Mr. Beatty was executed despite being denied sufficient IQ or mental health testing. While this was devastating, knowing that our work reassured him of his humanity and inherent dignity in his last few months meant that our work was far from meaningless.

While death penalty work can be discouraging, this clinic is unquestionably the most meaningful thing I have ever done. A major career goal of mine is now to work in criminal defense. Because the Supreme Court of Texas has a solely civil docket, I am interested in clerking in the federal system for a judge with significant criminal practice experience. While many clerkships would be invaluable for this goal, your experience in the U.S. Attorney's Office and your reputation for integrity and public service, confirm my desire to clerk in your chambers.

My application includes my resume, transcript, writing sample, and three professional references. These references may be reached as follows:

- Jordan M. Steiker, Professor of Law, University of Texas School of Law
  jsteiker@law.utexas.edu; (512) 680-4709

- Lawrence G. Sager, Professor of Law, University of Texas School of Law
  lsager@law.utexas.edu; (512) 698-6842

- Ben Bernell, Partner, Pillsbury, Winthrop, Shaw & Pittman LLP
  Ben.bernell@pillsburylaw.com; (512) 580-9631

Respectfully,

Seth Cook

William "Seth" Cook

wscook@utexas.edu | 7004 Colony Park Dr. Austin, Texas 78724 | (817) 713-0574

EDUCATION

The University of Texas School of Law, Austin, Texas
J.D. expected May 2023
GPA: 3.63

- *Chief Symposium Editor*, THE REVIEW OF LITIGATION, Vol. 42, 2022 – 2023
- *Research Assistant*, Professor Lawrence G. Sager
- *Student Attorney*, Capital Punishment Clinic (Fall 2022 – Spring 2023)
- *Recipient*, Chief Justice Joe R. Greenhill Presidential Scholarship in Law

University of Arkansas, Fulbright College of Arts and Sciences, Fayetteville, Arkansas
B.A. in Political Science, May 2019

- Senior Thesis: "*The Developing Impact of Twitter on Presidential Campaign Discourse"*
- Pi Sigma Alpha, Political Science Honor Society
- Dean's List, 2017-2019
- Chancellor's List, 2018-2019

PUBLICATIONS

- *Standing for the Lorax: Augmenting an Ill-Suited Standing Doctrine to Allow for Justice in Novel Climate Change Litigation*, 41 REV. OF LITIG. 409 (2022).
    - Winner, Best Student Note Award, THE REVIEW OF LITIGATION, Vol. 41.
- *Protecting the Most Vulnerable: Pursuing a Clear and Functional Equal Protection Framework for Transgender Youth*, 28 TEX. J. C.L. & C.R. (forthcoming 2023).
    - Presenter, TEXAS JOURNAL OF CIVIL LIBERTIES & CIVIL RIGHTS 2023 Symposium: *Legal Issues Impacting the LGBTQIA+ Community*.

EXPERIENCE

The Honorable Debra H. Lehrmann, Senior Associate Justice
The Supreme Court of Texas, Austin, Texas
Judicial Law Clerk, September 2023 – 2024 (expected)

Pillsbury Winthrop Shaw & Pittman LLP, Austin, Texas
Summer Associate, May 2022 – July 2022

- Edited and drafted briefs on antitrust and patent issues in district and appellate courts.
- Supported attorneys in pro bono representation with the Mid-Atlantic Innocence Project.

The Honorable Tony Davis, U.S. Bankruptcy Judge
U.S. Bankruptcy Court for the Western District of Texas, Austin, Texas
Judicial Intern, July 2021 – August 2021

- Drafted bench memos, orders, judgments, and an opinion.
- Analyzed confirmation requirements under the newly amended Chapter 11 proceedings.

Harris County District Attorney's Office, Human Trafficking Division, Houston, Texas
Law Clerk, June 2021 – July 2021

- Aided ADAs in trial preparation, including voir dire and witness interviews.
- Wrote memorandum on Faretta Hearings and synthesized evidence into writing.

INTERESTS

- Playing pick-up basketball, writing music and poetry, and studying theology.

Prepared on February 10th, 2023

THE UNIVERSITY OF TEXAS SCHOOL OF LAW

UNOFFICIAL TRANSCRIPT PRINTED BY STUDENT

JD

OFFICIAL NAME: COOK, WILLIAM SETH
PREFERRED NAME: Cook, William S.

ADMIT: 08-26-2020

TOTAL HOURS CREDIT: 73.00
CUMULATIVE GPA: 3.63

FAL 2020	423	CRIMINAL LAW I		4.0	A- JEL
	427	TORTS		4.0	B+ TOM
	531	PROPERTY-WB		5.0	C+ JSD
	332R	LEGAL ANALYSIS AND COMM		3.0	B+ ECD
SPR 2021	433	CIVIL PROCEDURE-WB		4.0	B+ RGB
	434	CONSTITUTIONAL LAW I-WB		4.0	A- LGS
	421	CONTRACTS		4.0	A OB
	232S	PERSUASIVE WRTG AND ADV		2.0	B+ SJP
FAL 2021	397S	SMNR: COLLOQ CMPLX LITI		3.0	A LAB
	387W	APPELLATE ADVOCACY		3.0	A- RMR
	381C	CNST LAW II: RACE/SEX D		3.0	A JMS
	392P	ANTITRUST		3.0	A ALW
	397S	SMNR: ENV IMPCT ENRGY D		3.0	A+ DGN
SPR 2022	397S	SMNR: MERCY		3.0	A- LK
	483	EVIDENCE		4.0	A- SJG
	385	PROFESSIONAL RESPONSIBI		3.0	A- JSD
	386V	PATENT LITIGATION		3.0	B+ CJH
	397L	DIRECTED RESEARCH AND S		3.0	A LGS
FAL 2022	383F	CAPITAL PUNISHMENT		3.0	A JMS
	284W	ADV LGL WR: APPEALS	P/F	2.0	CR KO
	497C	CLINIC: CAPITAL PUNISHM	P/F	4.0	CR TJP
	393H	CNSMR PROT: DECPT TRD P		3.0	A FAD
SPR 2023	383G	CAPITAL PUNISHMENT: ADV		3.0	
	284Q	APPELLATE CLERKSHIP WRI	P/F	2.0	
	486	FEDERAL COURTS		4.0	
	397S	SMNR: SUPREME COURT		3.0	
	197W	CLINIC, ADVANCED	P/F	1.0	

	HOURS ATTEMPT	HOURS PASSED	EXCLUDE P/F	SEM AVG
FAL 2020	16.00	16.00	16.00	3.09
SPR 2021	30.00	30.00	30.00	3.61
FAL 2021	45.00	45.00	45.00	4.00
SPR 2022	61.00	61.00	61.00	3.68
FAL 2022	73.00	73.00	67.00	4.00
SPR 2023	73.00	73.00	67.00	0.00

01-20-2023

EXPLANATION OF TRANSCRIPT CODES

GRADING SYSTEM

LETTER GRADE	GRADE POINTS
A+	4.3
A	4.0
A-	3.7
B+	3.3
B	3.0
B-	2.7
C+	2.3
C	2.0
D	1.7
F	1.3

Effective Fall 2003, the School of Law adopted new grading rules to include a required mean of 3.25-3.35 for all courses other than writing seminars.

Symbols:

Q	Dropped course officially without penalty.
CR	Credit
W	Withdrew officially from The University
X	Incomplete
I	Permanent Incomplete
#	Course taken on pass/fail basis
+	Course offered only on a pass/fail basis
*	First semester of a two semester course

A student must receive a final grade of at least a D to receive credit for the course. To graduate, a student must have a cumulative grade point average of at least 1.90.

COURSE NUMBERING SYSTEM

Courses are designated by three digit numbers. The key to the credit value of a course is the first digit.

101	-	199	One semester hour
201	-	299	Two semester hours
301	-	399	Three semester hours
401	-	499	Four semester hours
501	-	599	Five semester hours
601	-	699	Six semester hours

SCHOLASTIC PROBATION CODES

SP	=	Scholastic probation
CSP	=	Continued on scholastic probation
OSP	=	Off scholastic probation
DFF	=	Dropped for failure
RE	=	Reinstated
EX	=	Expelled

March 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing in warm support of Seth Cook, who has applied to be your law clerk. Seth's formal name is William, but I and others in the UT Law environment have known him as Seth; so I will continue with that name.

I first encountered Seth in my Con Law 1 class, which was on-line on account of Covid. After several post-course meetings, I asked him to act as one of my research assistants. In this past semester I directed a research project of his, on the constitutional approach to discrimination against members of the LGBTQ community. So I have seen Seth and his work in a variety of contexts.

For all of that, I am going to begin by referencing Seth's transcript and CV, because they suggest things about him that are fully borne out by my experience. Seth's grades begin a bit flat, and then swoop up to excellence. And Seth's CV paints a rough sketch of a person with political interests and concerns, but with a willingness and commitment to work hard towards his professional and political goals. This picture of a hard worker, digging at his projects, and succeeding brilliantly, tracks my experience with Seth perfectly.

Seth is intellectually gifted but modest and anxious to learn. Law school has been a tonic for him. As his studies have progressed, he has grown more sophisticated and confident. His directed research project serves as a good example of his evolving strength, underlying diligence, and ability to produce really good work. After each draft of his essay, Seth and I would talk. He listened and learned. The successive draft would not parrot my thoughts at all, but would reflect what Seth had taken from our conversation, and the result would be a significant improvement. In the end, the result was a really fine essay. But more importantly, for purposes of my being able to recommend him to you, the process reflects the combination of his intelligence and his hunger to excel.

I have enjoyed the benefits of Seth's research on projects of my own, and can speak directly to his energy and ability. I am confident that Seth will be a terrific law clerk. I am very happy to be able to recommend him to you.

Please feel free to contact me if I can be of any further assistance.

With sincere regards,

Lawrence G. Sager
Alice Jane Drysdale Sheffield Regents Chair
The University of Texas at Austin

March 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Mr. Cook is applying for a clerkship in your chambers, and I recommend him with tremendous enthusiasm. Mr. Cook was a student in two of my upper-level constitutional law courses, "Race, Sex, and the Constitution" (Fall of 2021), and "Capital Punishment" (Fall of 2022). The race and sex course focuses on constitutional (and, to a lesser extent, statutory) approaches to race and sex discrimination. The class covers a wide range of materials, including historical, doctrinal, and theoretical frameworks. Although the class was somewhat large (about 40 students), I was able to get to know Mr. Cook well because he was such a strong participant in class discussions, and he regularly attended office hours. He displayed a deep understanding of the complicated theoretical and practical issues surrounding discrimination law, and his comments reflected both his intellectual curiosity and his sophisticated engagement of the course material. Given his consistently positive contributions, I was unsurprised by Mr. Cook's outstanding final exam. His exam was one of the very best in the class, reflecting a clear command of the course material. The following year, Mr. Cook took my capital punishment course focusing primarily on the extensive federal constitutional regulation of the American death penalty. Again, Mr. Cook stood out as a truly outstanding student, one of the best participants in a large (60 person) class. He had a knack for locating the difficult issues in the material and he consistently offered perceptive critiques of prevailing doctrine. Mr. Cook also demonstrated an impressive command of the difficult statutory material in the course – the elaborate doctrines governing the availability of federal habeas corpus review of state criminal convictions. His exam was truly outstanding, reflecting his genuine mastery of the highly technical material as well as a deep understanding of the broader issues at stake in capital litigation.

Apart from our interactions around these classes, I was able to get to know Mr. Cook very well. He participated in our capital punishment clinic, which involves student in the representation of death-sentenced inmates on Texas's death row. My colleagues uniformly viewed Mr. Cook as a particularly able and committed student in the clinic's work. Mr. Cook also serves as a research assistant for my colleague Larry Sager (former Dean of the Law School), and I've found that he, too, regards Mr. Cook as an exceptional student and research assistant (Mr. Cook is currently enrolled in Professor Sager's course on the U.S. Supreme Court, and I believe Mr. Cook helped select the cases from this Court's Term which provide the focus for this semester's seminar).

Mr. Cook stands out as one of our best clerkship candidates. Apart from his tremendous academic achievement, he has had an unusual level of experience and interest in high-powered litigation. In addition to our capital punishment clinic, Mr. Cook served as an intern for Judge Davis in the bankruptcy court; after graduation, Mr. Cook will serve as a law clerk for Justice Lehrmann on the Texas Supreme Court.

I've spent some time discussing Mr. Cook's career aspirations and he seems interested in pursuing post-conviction capital defense, perhaps in one of the Capital Habeas Units housed in the various Federal Public Defender offices. He will bring a wealth of knowledge about criminal justice issues and federal habeas to a federal clerkship, and the experience of a federal clerkship will greatly advance his training for a position at one of the federal CHUs.

On the more personal side, Mr. Cook is a delight. He is an unusually mature student who wants to use his legal training to support individuals in great need. He is bright, hardworking, and very talented. He also loves to engage in wide-ranging conversations about legal theory and legal practice. He seems to have a great appreciation of the complexity of legal interpretation while maintaining a healthy grounding in the details of legal practice. He would be a welcome addition to any chambers. I count him as one of the true stars of the current class.

Sincerely,

Jordan M. Steiker
Judge Robert M. Parker Endowed Chair in Law
Co-Director, Capital Punishment Center
The University of Texas School of Law

Jordan Steiker - jsteiker@law.utexas.edu - 512-232-1346

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
HOMER J. THORNBERRY JUDICIAL BUILDING
903 SAN JACINTO BLVD., SUITE 332
SAN ANTONIO, TEXAS 78701

CHAMBERS OF
HON. TONY M. DAVIS
JUDGE

(512) 916-5875
FAX (512) 916-5808

Dear Judge,

Seth interned with us during the latter part of the summer of 2021, which is the typical period of time for a summer intern. Within that short period of time, we typically do not get a lot of worthwhile work product out of our interns, given the amount of time required to orient them to our chamber's procedures, processes, and forms. Seth, though, pick up on all three very quickly, and managed to make a meaningful contribution to our chambers. He did so, I think, because of his innate intelligence, his natural curiosity about the law, and because he really enjoyed our collaborative chambers environment. On that point, we enjoyed Seth as well, as he is quite personable.

Among other things, Seth prepared a well-researched, well-written memo on a very technical area of bankruptcy law, he properly analyzed a plan filed under the new provisions of Subpart V of chapter 11, and he prepared a short ruling on a request for an award of costs. The latter impressed me the most. Most interns, faced with a practical task like that, will agonize endlessly, and then produce something several pages too long. Seth succinctly stated the facts, the relevant legal test, and correctly applied that test to the facts, all in about a page – on his first draft. I made minor, stylistic changes and then signed it.

Seth has the intelligence, the personality, and the enthusiasm needed to become a good law clerk.

Best Regards,

Tony M. Davis

The Honorable Tony M. Davis

March 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing this letter in support of Seth Cook's application for a clerkship in your chambers. As a former federal district court clerk, I recognize the intellectual skill and work ethic required to successfully aid your duties behind the bench and am happy to recommend a candidate that I believe would be a great asset to your office.

I know Seth from his time as a summer associate in the Austin office of my law firm, Pillsbury Winthrop Shaw Pittman LLP. I was assigned to be Seth's mentor at the firm and was thus able to gain a first-hand glimpse into his dedication, legal instincts, and his overall curiosity. On the basis of my work with Seth, and having observed the work he did for others in my office, I am confident he will make an excellent law clerk.

As a summer associate, Seth's work product was impeccable. His research was thorough, his analysis balanced and well-reasoned, and his writing crisp, to the point, and easy to read. One assignment that readily comes to mind and reflects these qualities was based on a request for research and guidance concerning a particularly unclear area of Texas state law pertaining to the precise contours of contracts that call for successive performance and that are arguably indefinite in duration. In light of the lack of clarity in Texas law, and the contract Seth was asked to analyze, numerous questions arose. When a contract that calls for successive performance by one party, but does not set forth a particular time for the performance to end, is the contract indefinite as a matter of law? Conversely, where the contract does not have a specified end date, but there is an ascertainable event which both parties can identify that determines the contract's duration, even if that event might never occur, does that render the contract definite? What if the contract merely states that a non-breaching party can terminate the contract if the other party is in breach and fails to cure? Does that render an otherwise indefinite contract definite? Or are such events not of the kind that transform a contract of indefinite duration into one of definite duration because they simply state a fundamental principle of contract law, i.e., that a party may terminate an agreement if the counter-party materially breaches and fails to cure? And what if the contract is found to be indefinite? Does it become terminable at will or is the court to impute a reasonable time for performance?

These questions were difficult ones, with no simple answers and little by way of consistent guiding precedent. The Texas Supreme Court had only spoken to the issue on a scant few occasions, and never in the context of purely private contracting parties – all pertinent cases from the state supreme court involved contracts for government service, which often involved extra-contractual considerations, such as those called for by statute or public policy concerns typically absent from the private party context. Seth responded quickly with a well-researched, lengthy analysis that answered all questions posed, and more importantly, reflected hard work and thoughtful reasoning. It was clear that, instead of reaching a conclusion at the outset and working backwards to support his conclusion, Seth took a great deal of time to digest the pertinent authority, consider the facts and surrounding equitable circumstances, and present various potential applications of the law. After he submitted his work, we asked Seth to turn around and begin drafting a motion for summary judgment based on his findings. That is, as a summer associate, we were glad to leverage Seth's work directly into a filing with the court, and I trust he would perform similarly for your chambers.

From this assignment and various others, I learned that Seth displays a very strong ability to quickly grasp and work with legal doctrine. I was particularly impressed with his ability to delve into the details of a particular issue, quickly digest the facts and law, and clearly and succinctly produce a summary and reasoned application of the controlling and persuasive authority, all while preserving a strong sense of the context from which the matter arose. He clearly has the tools to become an exceptionally skilled law clerk and lawyer. Of course, none of this should come as a surprise, as Seth's academic record is excellent. I suspect his skills will only sharpen with the experience he will receive while clerking for Texas Supreme Court Justice Debra Lehrmann upon his graduation.

On a more personal note, having spent a significant amount of time with Seth, I can confidently say that—above all else—he is an individual that earnestly cares for his friends and colleagues. He was very much the "glue" of his summer class, as he repeatedly helped his fellow summer associates complete tasks in the short time frame allotted when they were overworked. Seth's inclination to care for those around him and volunteer to aid their work efforts is a trait that will surely be of great value in light of the complex cases and increasingly immense workload born by your chambers.

In short, I recommend Seth to you enthusiastically and without reservation. If I can be of any further assistance in your review of his candidacy, please feel free to contact me.

Very truly yours,

Ben Bernell, Partner

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William "Seth" Cook
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Writing Sample

This writing sample is an excerpt from an appellant's brief written for an advanced legal writing class at the University of Texas School of Law. This version of the brief has the benefit of generalized global feedback given to the whole class, but no specific editing or commentary.

I was assigned to represent the appellant, a visually impaired history professor named Howard Bekavac. When Professor Bekavac sought to order from a web-based catering company for his students, his screen reading software was unable to vocalize the website's menu. Appellee, Klingenmaier's BBQ4U, had designed their website with only images as a menu which functionally prohibited the website from being accessible to the visually impaired. The district court ruled that websites did not qualify as public accommodations as a matter of first impression and granted summary judgment for the appellee. The sole issue on appeal is whether a web-based business without a nexus to a physical location qualified as a public accommodation under Title III of the ADA.

Argument

The Americans with Disabilities Act ("ADA") provides a statutory basis for persons with disabilities to vindicate their equal standing in society. Appellee—a catering corporation—contends that because it does not have a brick-and-mortar store, the ADA cannot make it accommodate persons with visual disabilities. True, the ADA does not expressly state that websites are "places of public accommodation" under § 42 U.S.C. 12182(a). However, the breadth of §§ 12182(a) and 12181(b)'s language and the underlying purpose of the ADA demonstrate that "places of public accommodation" do include web-based companies.

I. THE PLAIN LANGUAGE OF TITLE III OF THE ADA LOGICALLY INCLUDES WEB-BASED BUSINESSES AS PLACES OF PUBLIC ACCOMMODATION.

The language of § 12182 does not expressly exclude web-based businesses from the ADA's requirements. The statute states the purpose of Title III broadly:

> "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations *of any place of public accommodation* by any person who owns, leases (or leases to), or operates a place of public accommodation."

§ 42 U.S.C. 12182(a) (emphasis added). This provision plainly states the ADA's intent and the key policies it establishes. Section 12181(7), the provision defining the term public accommodations, lists several examples that any reasonable reader would recognize as *not* primarily in-person services. For example, the inclusion of travel services and insurance sales—intangible goods and services historically rendered

over the phone—substantially calls into question the district court's assertion that the statute requires a physical nexus. Had the authors of Title III sought to ensure that only physical establishments would be considered public accommodations, it would have been far more logical to simply say that. Contradictorily, the district court's interpretation reads a physical nexus requirement by negative implication from a non-exhaustive list of examples—only *some* of which are primarily in-person services.

Also counseling against the district court's interpretation is the language of § 12181(7)(B)—the clause most relevant to this suit. Examples include "restaurants, bars, or *other food services establishments*." § 12181(7)(B). Had Congress intended to include only brick-and-mortar restaurants and bars, it would have refrained from adding an additional phrase expanding the traditional meaning of those terms.

A. The text is broad enough to include web-based businesses.

The term "place of public accommodation" as used and defined in §§ 12182(a) & 12181(7) and when interpreted contextually, includes web-based businesses.

When the legal issue is one of statutory construction, the "court must start with the statute's words." *Sanzone v. Mercy Health*, 954 F.3d 1031, 1040 (8th Cir. 2020). However, "the definitions of words in isolation. . .are not necessarily controlling in statutory construction." *Iverson v. United States*, 973 F.3d 843, 847 (8th Cir. 2020). Further, the "interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis." *Id.* (citing *Dolan v. U.S. Postal*

Serv., 546 U.S. 481 486 (2006)). Accordingly, the definition of the term "public accommodation" must be construed in the very same contextual and purposeful way.

First, we start with the plain language. An "accommodation" is commonly defined as "something supplied for convenience or to satisfy a need: such as lodging, food, and services or traveling space and related services." Merriam-Webster's Dictionary (12th ed. 2019). This definition tracks well with the examples articulated in § 12181(7): lodging ("an inn, hotel, motel or other place of lodging"), food ("restaurant, bar, or other establishment serving food or drink"), services or traveling space ("a terminal, depot, or other station"). § 12181(7)(a)-(g). In fact, because the statute has numerous other enumerated examples, the statutory definition is even *more* expansive than we find in the dictionary.

Within this expansive definition is "a restaurant, bar, *or other establishment serving food or drink."* § 12181(7)(B). The disjunctive "or" implies that while our traditional understandings of restaurants and bars are plainly included, "other establishment[s] serving food or drink"—which may not fall into traditional archetypes of restaurants and bars—are *also* included. It would be illogical to assume Congress only intended "other establishment[s] serving food or drink" to refer to the same traditional understanding of physical restaurants and bars when it included another clause phrased differently and attached by a disjunctive "or."

While logic counsels against this reading, so does Supreme Court precedent on statutory interpretation. Courts are required to "always turn first to one, cardinal canon before all others…courts must presume that a legislature says in a statute

what it means and means in the statute what it says." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). When giving meaning to words and phrases, the Court has said "it is our duty to give effect, if possible, to every clause and word of a statute." *United States v. Menasche,* 348 U.S. 528, 538–539 (1955); *see also Williams v. Taylor,* 529 U.S. 362, 404 (2000) (describing this rule as a "cardinal principle of statutory construction"); *Market Co. v. Hoffman,* 101 U.S. 112, 115 (1879) ("As early as in Bacon's Abridgment, sect. 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'"). If "other establishment serving food or drink" simply refers to in-person physical restaurants and bars, it is superfluous.

Under this cardinal principle against superfluidity, this Court is compelled to interpret "other establishment[s] serving food or drink" to include establishments other than just archetypal concepts of restaurants. One example of another establishment could be a fully web-based catering company. Appellee is unquestionably a food service establishment. However, it obviously does not fit into the traditional concept of a restaurant or bar. Appellee would argue that means it should be exempted from the requirements of § 12182(a). This argument by definition, however, relies on an interpretation rendering "other establishment[s] serving food or drink" utterly superfluous. Under the Court's cardinal principles of statutory interpretation, courts "should be reluctant to treat statutory terms as surplusage in any setting." *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (citing *Babbit v. Sweet Home Chapter, Communities for Great Ore.*, 515 U.S. 687, 698 (1995).

B. Intra-textual analysis also reveals the contemplation of non-tangible goods and services.

Section 12181(7)(F) includes—as an example of a public accommodation—the rendering of a "travel service" and services of an "insurance office." While the Eighth Circuit has not specifically interpreted "public accommodation" in this light, lower courts within the Eighth Circuit have addressed § 12182(a) in contextually similar ways. *See Dalton v. Kwik Trip, Inc.,* 2021 U.S. Dist. LEXIS 191967, at *8 (D. Minn. Oct. 5, 2021) (supporting the proposition that the lack of specific regulations regarding website accessibility does not eliminate the obligation to comply with the ADA). Notably, several circuits have found § 12182(a) to apply to web-based services.

The Seventh Circuit read § 12182(a) with a focus on the service rendered and deemed the language to include web-based insurance services. *Morgan v. Joint Admin. Bd., Retirement Plan of Pillsbury Co. and Am. Federation*, 268 F.3d 456, 459 (7th Cir. 2001); *see also Doe v. Mutual of Omaha Ins. Co.*, 170 F.3d 557, 558-59 (7th Cir. 1999) (A "…travel agency, theater, website, or other facility (whether in physical space or in electronic space)…that is open to the public cannot exclude disabled persons from…using the facility in the same way non-disabled people do.").

Specifically, the Seventh Circuit's analysis first looked at whether an insurance company could refuse to sell an insurance policy to persons who were visually impaired. *Doe*, 170 F.3d at 557. While the ADA could not compel changes to the underlying policy on visual disability, it barred the company from refusing to sell the policy simply because the customer was blind. *Id.* Later reaffirming this reasoning, the Seventh Circuit noted that since the selling of insurance services was

explicitly enumerated, it did not matter whether the services were sold in person or solely online. *Morgan*, 268 F.3d at 459 ("The site of the sale is irrelevant to Congress's goal of granting the disabled equal access to sellers of goods and services. What matters is that the goods be offered to the public.").

Similarly, the First Circuit held that "Congress clearly contemplated that service establishments include providers of services which do not require a person to physically enter an actual physical structure." *Carparts Distribution Ctr., Inc. v. Auto. Wholesaler's Ass'n of New England, Inc.*, 37 F.3d 12, 19 (1st Cir. 1994). The court reasoned that it would be "irrational to conclude that persons who enter an office to purchase services are protected by the ADA, but persons who purchase the same service over the telephone or by mail are not." *Id.* The First Circuit recognized that exempting an entire broad category of businesses making sales by phone or mail would produce absurd results and frustrate Congress's intent that "individuals with disabilities enjoy the goods, services…available indiscriminately to other members of the public." *Id.* As applicable as that was to mail and phone sales in 1994, the recognition of disability rights in non-physical spaces is much more vital in a society that conducts 49% of all sales in an online format.

While the Second Circuit has not explicitly held that § 12182(a) applies to websites, it has recognized that "insurance services" is defined by what it provides, not by where it is located. *Pallozzi v. Allstate Life Ins. Co.*, 198 F.3d 28, 31 (2d Cir. 1999). The court rejected the defendant's argument that "Congress intended the statute to ensure that the disabled have physical access to the facilities of insurance

providers, not to prohibit discrimination against the disabled in insurance underwriting." *Id.* The court stated that this contradicted the plain purpose of the ADA. *Id.* The Second Circuit's reasoning highlighted the varied examples found in § 12181(7)'s lists of public accommodations, and the emphasis placed on access to the services they render and not where or how those services are rendered. *Pallozzi*, 198 F.3d at 32.

Additionally, the distinction that the ADA makes between "places of public accommodation" and the term "facilities" when expressly referring to physical places is significant. *See* 42 U.S.C. § 12183. When the drafters of the ADA wanted to ensure their guidance was applying to exclusively physical places, they used a different word. *See Martinez v. Gutsy LLC*, No. 22-CV-409, U.S. Dist. LEXIS 214830, at *14 (E.D.N.Y. Nov. 29, 2022) ("This change in word choice—from "public accommodations" to "facilities"—when intending to discuss a physical space, further bolsters a textual interpretation of § 12181, in describing the covered entities under Title III, as having been concerned with entities' functions rather than their physical spaces.").

This services-focused view of the statutory language is directly applicable here. It is irrelevant whether the food or drink is ordered from the store, in-person, or online; what matters is that the food service is offered to the public in general and yet remains inaccessible to persons with a visual disability. The key aspect of the enumerated examples is similarity in service, not physical location. *See* Johanna Smith & John Inazu, *Virtual Access: A New Framework for Disability and Human Flourishing in an Online World*, 21 WIS. L. REV. 719, 766 (2021) ("The statutory focus

is on the entity's function: serving food, creating space for the public to gather, offering entertainment, providing education, offering banking or transportation services."). Because the statute explicitly enumerates food services, this Court should similarly hold that "the site of sale is irrelevant" and that "what matters is that the goods [were] offered to the public." *Morgan*, 268 F.3d at 459.

Intra-textual analysis reveals that the critical value of § 12182(a) is protecting equal access to the "full and equal enjoyment of" goods and services of public accommodations and not merely physical access to in-person establishments. Thus, this Court should recognize what the Seventh, First, and Second Circuits have made clear: the language of § 12182(a) includes exclusively web-based goods and services.

II. LEGISLATIVE HISTORY AND DOJ GUIDANCE REVEAL THAT WEB-BASED BUSINESS ARE PUBLIC ACCOMMODATIONS UNDER TITLE III.

The plain language reading of 42 U.S.C. § 12182(a) does not logically exclude web-based businesses from its definition of public accommodation, and the thoroughly articulated purpose of the ADA supports this reading. Numerous courts have fully fleshed out the legislative history and intra-textual policy goals, finding the refusal to include web-based businesses as public accommodation to lead to absurd results. This Court should recognize this history and purpose and interpret the language in a way that does not doom Title III to technological obsolescence.

A. The legislative history of the ADA compels a "liberal construction" of the enumerated public accommodations.

Congress enacted the ADA to "remedy widespread discrimination against disabled individuals." *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 674 (2001). Specifically,

Congress found that "historically, society has tended to isolate and segregate individuals with disabilities, and despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." *Id.* at 674-75 (citing 42 U.S.C. § 12101(a)(2)).

This pervasive and multi-faceted discrimination found its way into all areas of society in the form of "outright intentional exclusion" and the "failure to make modifications to existing facilities and practices." 42 U.S.C. § 12101(a)(5). These practices revealed a "compelling need for clear and comprehensive national mandate to eliminate discrimination against disabled individuals and to integrate them 'into the economic and social mainstream of American life.'" *PGA Tour*, 532 U.S. at 675 (citing S. Rep. No. 101–116, p. 20 (1989)).

Notably, web-based businesses like the appellee in this case did not exist in 1990 when § 12182 was enacted. However, "one of the Act's 'most impressive strengths' has been identified as its 'comprehensive character'" and broad mandate to "remedy widespread discrimination against disabled individuals." *Id.* (citing *Hearings on S. 933 Before the S. Comm. on Labor and Human Resources and the Subcomm. on the Handicapped*, 101st Cong., 1st Sess., 197 (1989) (statement of Attorney General Thornburgh)).

In line with this "broad mandate," public accommodation is defined in "terms of 12 extensive categories, which the legislative history indicates should be construed liberally' to afford people with disabilities 'equal access' to the wide variety of establishments available to the non-disabled." *Id.* at 676-77 (citing S. Rep. No. 101–

116, P. 59 (1989); H.R. Rep. No. 101–485, pt. 2, P. 100 (1990), U.S. Code Cong. & Admin. News 1990, pt. 2, at pp. 303, 382–83.). Giving § 12182(a) this liberal construction, "place of public accommodation" followed by the extensive list of examples, should not be construed to exclude web-based businesses.

Further confirming this interpretive intent, explicit in the legislative history is the objective that the statute be applied in stride with technological development. Specifically, the "Committee intends that the types of accommodation and services provided to individuals with disabilities, under all of the titles of this bill, *should keep pace with the rapidly changing technology of the times*." H.R. Rep. No. 101-485, at 108 (1990), reprinted in 1990 U.S.C.C.A.N. 303, 391 (emphasis added).

B. The DOJ's Guidance on ADA Interpretation explicitly includes web-based goods and services.

Consistent with Congress's intent for the ADA to keep pace with technology, the DOJ has offered guidance on the web-based provision of goods and services. The DOJ has "consistently taken the position that the ADA's requirements apply to all the goods, services, privileges, or activities offered by public accommodations, including those offered on the web." U.S. Dep't of Just., Guidance on Web Accessibility and the ADA (Mar. 18, 2022).

While the DOJ guidance is not binding on this court, the DOJ's expertise in interpreting federal statutes and recognition of public accommodations as "any business open to the public" are of significant import. *See Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) ("A guidance document . . . is entitled to deference depending upon the thoroughness evident in its consideration, the validity of its

reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade.").

Appellee's proposed construction of Title III would limit this unquestionably expansive undertaking to a subset of public accommodations whose market power is shrinking by the day. This construction contradicts the explicit instructions found in the legislative history announcing the ADA and the rights it sought to protect.

III. THE DISTRICT COURT'S INTERPRETATION WOULD PLAINLY THWART THE PURPOSE OF THE ADA.

The legislative history reveals the unambiguous purpose of Title III—the law protects persons with disabilities from marginalization, segregation, and animus. With this purpose in mind, the limitation of "public accommodation" to only in-person establishments would render the entire statute technologically obsolete and give modern businesses free rein to discriminate at will. This interpretation renders the statute contrary to its purpose and makes the ADA itself discriminatory. The facts presented here are sufficient to show the far-reaching harm of this interpretation.

First, this narrower interpretation allows modern web-based businesses to avoid ADA compliance by simply shifting their customer interaction entirely online. Prof. Bekavac does not assert that the Appellee designed its website out of animosity toward the blind community. However, if the Appellee allowed food to be picked up from the property where the smoker was located, there would be *no question* about whether it was a public accommodation. Let us consider if this had been the case. Had the Appellee maintained the same website but allowed customers to pick up their

orders from the smoker property or the kitchen where she made the sides, there would be an unquestionable nexus to physical property. Had Prof. Bekavac brought this same claim, there would have been immediate relief.

Under the district court's interpretation of Title III, however, the Appellee could skirt its duty to respect the professor's civil rights simply by not allowing customers to pick up their food anymore. This arbitrary and logistical choice would allow the Appellee to discriminate against the blind for the rest of its existence, insulated from any challenge. This example reveals how arbitrary it would be in this modern day—where almost every business providing goods or services has a website performing significant portions of its sales[1]—to exempt web-based businesses from their obligation to respect the civil rights of persons with disabilities.

Second, this interpretation of "public accommodations" makes Title III itself discriminatory on its face. By vindicating the rights of the disabled in physical establishments only, Title III tells persons with disabilities preventing them from engaging in in-person commerce that their disability is too severe for their rights to be protected. If Prof. Bekavac could not get around independently and instead chose to purchase his groceries from a web-based meal service, he would be functionally deemed without rights to vindicate. Additionally, in the era of Covid-19, those who may be severely immunocompromised and are encouraged to avoid in-person gatherings and crowded stores would be cast aside. This Court cannot recognize an

[1] *See*, *supra*, note 1, https://www.drip.com/blog/online-shopping-statistics.

application of the ADA that creates a ranking among people with disabilities deeming some of them *too disabled* to protect.

The district court's interpretation of "public accommodations" to solely include physical locations fails to recognize the purpose of Title III. Any party that wanted to avoid ADA compliance could move its customer interaction online—an increasingly common choice as we recover from a global pandemic. This scenario would render illusory the civil rights of the disabled that the ADA claims to vindicate and allow businesses to sidestep even the most reasonable regulations—either out of animus or laziness.

Conclusion

Title III of the ADA promises those with disabilities the full and equal enjoyment of the goods, services, and privileges of public accommodations. As we continue developing a technologically advanced and online society, it cannot be the case that a company conducting its business solely online renders Title III an illusory promise of civil rights for Prof. Bekavac.

For these reasons, this Court should agree with the First, Second, and Seventh Circuits that "public accommodations" includes web-based businesses, reverse the lower court's grant of summary judgment, and remand for further proceedings.

Applicant Details

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JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**May 21, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**American Criminal Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**William E. Leahy Moot Court Competition**

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby St.
Norfolk, VA 23510

Dear Judge Walker:

I am a recent Georgetown University Law Center graduate and I am applying for a clerkship in your chambers for the term beginning in 2024.

My strong desire is to serve indigent and incarcerated individuals navigating the legal system. At Georgetown, I sought experiences that cultivated this passion. I served as a legal extern for Rights Behind Bars and as a student attorney in the Appellate Courts Immersion Clinic. In the clinic, I had the unique opportunity to argue one of our cases before the D.C. Circuit. I take great joy in the process of deconstructing arguments, thinking strategically about how to frame cases, and distilling complex issues in a clear manner.

Above all, I am driven by curiosity and eager to continue learning. I would be honored to serve as your law clerk. My resume, law school transcript, and writing sample are enclosed. You will also be receiving letters of recommendation from Professors Brian Wolfman (202-661-6582), Mary McCord (202-661-6607), Julie O'Sullivan (202-662-9394), and Rima Sirota (202-662-6728) on my behalf. Thank you for your consideration.

Respectfully,

Ciara Cooney

CIARA COONEY

cnc63@georgetown.edu • (703) 975-3415 • 811 4th St NW, Unit 514, Washington D.C. 20001

EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER, J.D., *magna cum laude* May 2023

GPA: 3.90

Activities: William E. Leahy Moot Court Competition (Best Advocate)
American Criminal Law Review (Volume 60 Managing Editor)
Supreme Court Institute (Research Assistant)
Professor Rima Sirota (Research Assistant for Legal Practice)

Honors: Order of the Coif
Associate Dean's Award for Excellence in Clinic, Professor Brian Wolfman
CALI Award for Excellence in Criminal Justice, Professor Julie O'Sullivan

Publications: *Anything but Compassion: The Conflict Between Exhaustion and Compassionate Release*, 61 Am. Crim. L. Rev. __ (forthcoming 2023)
Discourse YouTube Series, Episode 01: Originalism (Moderator) (link)

UNIVERSITY OF VIRGINIA, B.A. with High Distinction in Public Policy & Leadership May 2017

Capstone: *Issues Impacting the Aging, Low-Income Population in Albemarle County*

EXPERIENCE

U.S. COURT OF APPEALS, TENTH CIRCUIT Aug. 2025–2026 (forthcoming)
Law Clerk to the Hon. Scott M. Matheson, Jr.

APPELLATE COURTS IMMERSION CLINIC, Washington, D.C. Jan.–May 2023
Student Attorney

- Argued before D.C. Circuit panel on whether a statutory filing deadline was a nonjurisdictional, claim-processing rule and whether equitable tolling was appropriate (link to argument audio).
- Co-authored briefs addressing the Civil Service Reform Act's jurisdictional requirements and equitable tolling; *Younger* abstention; and compassionate release.

RIGHTS BEHIND BARS, Washington, D.C. Sept.–Nov. 2022
Legal Extern

- Drafted opening brief section on Eighth Amendment deliberate indifference to medical needs; provided research on ADA liability and religious freedom protections in prisons.

KAPLAN HECKER & FINK LLP, New York, NY May–July 2022
Summer Associate; Law Clerk (forthcoming Sept. 2023)

- Drafted reply brief section on Prison Litigation Reform Act's three-strikes rule.
- Researched and wrote memoranda on legal issues including liability for defamation, Title IX developments, judicial review of arbitration, and federal and state criminal procedure.

GEORGETOWN ICAP, Washington, D.C. Aug.–Dec. 2021
Constitutional Impact Litigation Practicum Student

- Authored memorandum on a circuit split under Federal Rule of Civil Procedure 15(c); provided research for amicus brief on DACA's public safety benefits.

OFFICE OF THE PUBLIC DEFENDER, Arlington, VA May–July 2021
Legal Intern

- Drafted motion to suppress evidence collected from a vehicle on Fourth Amendment grounds.

PERSONAL

- Fledgling sketch-artist. Avid reader. Flat-white enthusiast. British, Irish, and American citizen.

Record of: Ciara Noelle Cooney
GUID: 802370126

GEORGETOWN UNIVERSITY
OFFICE OF THE LAW CENTER REGISTRAR
WASHINGTON, D.C. 20001
(202)662-9220

Course Level: Juris Doctor

Degrees Awarded:
Juris Doctor Jun 07, 2023
Georgetown University Law Center
Major: Law

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2020							
LAWJ	001	11	Civil Procedure Charles Abernathy	4.00	A-	14.68	
LAWJ	004	11	Constitutional Law I: The Federal System Josh Chafetz	3.00	A-	11.01	
LAWJ	005	12	Legal Practice: Writing and Analysis Diana Donahoe	2.00	IP	0.00	
LAWJ	008	11	Torts Girardeau Spann	4.00	A	16.00	

	EHrs	QHrs	QPts	GPA
Current	11.00	11.00	41.69	3.79
Cumulative	11.00	11.00	41.69	3.79

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2021							
LAWJ	002	11	Contracts Anupam Chander	4.00	A-	14.68	
LAWJ	003	11	Criminal Justice Julie O'Sullivan	4.00	A+	17.32	
LAWJ	005	12	Legal Practice: Writing and Analysis Rima Sirota	4.00	A+	17.32	
LAWJ	007	91	Property Madhavi Sunder	4.00	A-	14.68	
LAWJ	1701	50	International Economic Law and Institutions Sean Hagan	3.00	A	12.00	
LAWJ	611	04	Restorative Justice: Law and Policy Intersections Thalia Gonzalez	1.00	P	0.00	

Dean's List 2020-2021

	EHrs	QHrs	QPts	GPA
Current	20.00	19.00	76.00	4.00
Annual	31.00	30.00	117.69	3.92
Cumulative	31.00	30.00	117.69	3.92

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	025	07	Administrative Law Glen Nager	3.00	A	12.00	
LAWJ	1601	01	Constitutional Impact Litigation Practicum (Project-Based Practicum) Mary McCord	5.00	A	20.00	
LAWJ	215	08	Constitutional Law II: Individual Rights and Liberties Louis Seidman	4.00	A	16.00	
LAWJ	317	05	Negotiations Seminar Kondi Kleinman	3.00	A	12.00	

----------Continued on Next Column----------

	EHrs	QHrs	QPts	GPA
Current	15.00	15.00	60.00	4.00
Cumulative	46.00	45.00	177.69	3.95

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	165	07	Evidence Mushtaq Gunja	4.00	A-	14.68	
LAWJ	1655	05	Criminal Justice Reform Seminar Shon Hopwood	3.00	A	12.00	
LAWJ	361	09	Lawyers' Ethics Abbe Smith	2.00	B+	6.66	
LAWJ	455	01	Federal White Collar Crime Julie O'Sullivan	4.00	A	16.00	

Dean's List 2021-2022

	EHrs	QHrs	QPts	GPA
Current	13.00	13.00	49.34	3.80
Annual	28.00	28.00	109.34	3.91
Cumulative	59.00	58.00	227.03	3.91

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	1447	08	Mediation Advocacy Seminar Kelly Walsh	2.00	A-	7.34	
LAWJ	1491	01	Externship I Seminar (J.D. Externship Program) Sandeep Prasanna		NG		
LAWJ	1491	119	~Seminar Sandeep Prasanna	1.00	A-	3.67	
LAWJ	1491	121	~Fieldwork 3cr Sandeep Prasanna	3.00	P	0.00	
LAWJ	1631	05	Federal Practice Seminar: Contemporary Issues Irving Gornstein	2.00	A	8.00	
LAWJ	178	07	Federal Courts and the Federal System Michael Raab	3.00	A-	11.01	

In Progress:

	EHrs	QHrs	QPts	GPA
Current	11.00	8.00	30.02	3.75
Cumulative	70.00	66.00	257.05	3.89

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	049	05	Appellate Courts and Advocacy Workshop	2.00	A	8.00	
LAWJ	1538	05	Constitutional Law: The First and Second Amendments	1.00	P	0.00	
LAWJ	504	05	Appellate Courts Immersion Clinic		NG		
LAWJ	504	30	~Writing	4.00	A-	14.68	
LAWJ	504	80	~Research and Analysis	4.00	A	16.00	
LAWJ	504	81	~Advocacy & Client Relations	4.00	A	16.00	
Transcript Totals							

	EHrs	QHrs	QPts	GPA
Current	15.00	14.00	54.68	3.91
Annual	26.00	22.00	84.70	3.85
Cumulative	85.00	80.00	311.73	3.90

End of Juris Doctor Record

This electronic seal and signature serve as official certification on the following document.

Cornelia Gustafson
Interim Assistant Dean & Registrar

08-JUN-2023

GEORGETOWN UNIVERSITY LAW CENTER
EXPLANATION OF GRADING SYSTEM

Student matriculating in Fall 1998 or later

GRADE	Quality Points
† A+	4.33
A	4.00
A-	3.67
B+	3.33
B	3.00
B-	2.67
C+	2.33
C	2.00
C-	1.67
D	1.00
F	0.00

Averages are rounded to two decimal places.

Students who matriculated prior to Fall 1998

GRADE	Quality Points
A	12.000
A-	11.000
B+	10.000
B	9.000
B-	8.000
C+	7.000
C	6.000
C-	5.000
D	3.000
F	0.000

Averages are carried to three decimal places.

Center for Transnational Legal Studies-London Prior to Fall 2011 ‡

GRADE	Explanation
05	Outstanding
04	Excellent
03	Good
02	Fair
01	Fail

‡ Fall 2011 through Summer 2012, the Center for Transnational Legal Studies awarded the grades from 5.0 (highest score) to 1.0 (failing score), in 0.5 increments.

† In Fall 2009, the faculty established a grade of A+ for truly extraordinary academic performance in a law school class. From Fall 2009 to Spring 2020, the A+ grade carried quality points of 4.00. Beginning Summer 2020, the A+ grade carries quality points of 4.33.

An average may be computed by multiplying the numerical equivalent of each letter grade by the credit value of the course, then dividing the total thus obtained by the total number of quality hours (QHRS).

A semester is 13 weeks of class meetings. Class periods are 55 minutes per credit.

Grades for courses taken at other institutions appear on the student's transcripts but are not computed into the Law Center's average.

Current Grading Symbols

AF -Administrative F* (The student failed to take the examination or complete other course requirements.)
AP -Administrative Pass** (The student passed the course but did not stop writing before the time allowed for the examination expired.)
AU -Audit (non-degree only)**
CR -Administrative Credit**
IP -Course in Progress**
NG -Non-Graded Course**
NR -Grade Not Recorded**
P -Pass **
H -Honors**
W -Withdrawal**

Prior Grading Symbols

EW -Excused Withdrawal
PR -Proficient
S -Satisfactory
U -Unsatisfactory
NC -No Credit

Other Symbols

EHRS - Earned Hours
LW - Legal Writing Requirement
QHRS - Quality Hours
QPI - Quality Point Index
QPTS - Quality Points
RC - Residency Requirement
R - Include/Exclude Credit

* Included in quality hours and grade point average.
** Not included in quality hours or grade point average.

Inquiries may be addressed to:
Office of Registrar, Georgetown University Law Center
600 New Jersey Avenue, N.W. Washington, D.C. 20001
Tel: (202) 662-9220 Fax: (202) 662-9235
lawreg@law.georgetown.edu

RELEASE OF INFORMATION

In accordance with the Family Rights and Privacy Act of 1974, this transcript is released to you at the request of the student with the condition it will not be made available to any other party without the written consent of the student.

Send To : CIARA COONEY

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Ciara Cooney for a judicial clerkship. Ms. Cooney was the top student in my Legal Practice class during her first year at Georgetown Law, and she was an exceptional research assistant for me in her second year.

Legal Practice is a year-long legal research and writing course, organized so that students research and write (and re-write, and re-write again) a number of increasingly complex assignments throughout the year. The Fall semester focuses on objective memoranda, while in the Spring we turn to persuasive advocacy. Throughout the year, I also include a number of smaller units designed to introduce students to other practical lawyering skills such as oral argument and writing for a variety of audiences.

Ms. Cooney earned the highest total score out of fifty-one students and an A+ grade. She excelled on every measure. For example, I had students independently research and write a complex appellate brief on a witness identification issue at the end of the spring semester. Ms. Cooney's submission was so accomplished that I posted it for the entire class as a model of what I was looking for. Additionally, Ms. Cooney earned top marks on timeliness, participation, attendance, and effort on ungraded assignments; these professionalism qualities are sometimes overlooked and undervalued by law students, but not by Ms. Cooney.

Given her performance in my Legal Practice class, Ms. Cooney was an easy pick to be my part-time research assistant during the fall semester of her second year. I made an excellent choice. To help me prepare an upcoming writing problem for my first-year students, Ms. Cooney researched and wrote an appellate brief for one side in a Terry stop matter. Ms. Cooney worked independently, coming to me with questions only after she had thought them through. Our conversations and her final work product resulted in a far more focused and manageable writing problem for my students.

In addition to working as my research assistant, she was also selected as a research assistant for Georgetown's Supreme Court Institute. I asked the Director of the Institute about Ms. Cooney's performance in this role, and her experience with Ms. Cooney echoes my own:

> Ciara has demonstrated the highest level of responsibility, reliability, integrity, maturity, discretion, and professional demeanor. She is consistently responsive, knows when to ask questions, is fastidious about details, and meets deadlines without reminders. Ciara has stood out among her peers for her enthusiasm and positivity and has been an exceptional collaborator in ensuring the success of our program. I could not be happier that she accepted my offer to serve as an RA for the Supreme Court Institute for a second year.

Throughout law school, Ms. Cooney continued to seize opportunities to further hone her research and writing skills. She was elected Managing Editor of the American Criminal Law Review, which also published her note on exhaustion and compassionate release. Through the Appellate Courts Immersion Clinic, Ms. Cooney argued to the D.C. Circuit that a thirty-year-old precedent should be overturned, and she helped draft several of the briefs. Shortly before graduation, Ms. Cooney was invited to moderate a discussion on originalism between Georgetown's Dean and the Executive Director of Georgetown's Center for the Constitution.

I asked Ms. Cooney why she is seeking a clerkship. She cited her love of problem-solving and the opportunity to learn how advocates and judges shape the law. She also believes quite simply that she would be good at it and would enjoy it. Based on my experience with Ms. Cooney, that is absolutely right. She is detail-oriented, reliable, an effective researcher, and a clear and concise writer; she is clear-eyed in assessing the strengths and weaknesses of legal arguments; and her positive attitude is second to none.

I recommend Ms. Cooney to you with no hesitation.

Sincerely,

Rima Sirota

Rima Sirota - rs367@law.georgetown.edu - (202) 353-7531

GEORGETOWN LAW

Brian Wolfman
Professor from Practice
Director, Appellate Courts Immersion Clinic

June 7, 2023

Re: Clerkship recommendation for **Ciara Cooney**

I enthusiastically recommend Ciara Cooney to serve as your law clerk.

I got to know Ciara in the spring semester of 2023 when she was a student-lawyer in the Appellate Courts Immersion Clinic at Georgetown University Law Center. (I am the clinic's director.) The clinic handles complex appeals in the federal courts of appeals and in the Supreme Court. Students act as the principal lawyers researching and writing briefs under my supervision.

The clinic operates full-time. Students take no classes other than the clinic and a co-requisite seminar about the law of the appellate courts. (I comment on Ciara's work in the seminar later in this letter.) I worked with Ciara nearly daily for an entire semester and was able to observe her as a judge would observe a law clerk or as a senior lawyer might observe a close associate. This letter, therefore, is based not on one exam, a handful of comments in class, or even a few meetings, but on an intensive, day-to-day working relationship.

I'll start with my bottom-line recommendation: Ciara would be an excellent law clerk. Ciara's work in our clinic was very strong. Her legal analysis was generally spot on. She never looked for easy ways out of tough legal problems. Her writing was clear and straightforward. Ciara works hard. She was highly dedicated to her clients and was a terrific colleague to the other students and her clinic mentors.

For these reasons, I awarded Ciara the Associate Dean's Award for Excellence in Clinic—which I give to only two students over the entire academic year. This award is the highest graduation recognition that a Georgetown Law clinic student can achieve. According to the school "this award recognizes students who are nominated by their clinic faculty

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wolfmanb@law.georgetown.edu

supervisors and acknowledges their exceptional work as student attorneys on behalf of the clinic's clients."

I'll turn now to Ciara's major clinic projects. First, Ciara was asked to write a reply brief to the D.C. Circuit in an appeal seeking to topple a decades-old circuit precedent holding that a statute of limitations applicable in certain employment-discrimination suits is "jurisdictional" and therefore not subject to equitable tolling. Working with two other students, Ciara explained why, under circuit procedures, the prior precedent could be overruled by a panel without input from the en banc court. The team also argued that, under the particular circumstances of the case arising from the pandemic, the deadline should be tolled. Ciara did an excellent job researching and writing the brief. Ciara also had the rare opportunity as a student to argue the appeal to the D.C. Circuit. Ciara prepared painstakingly. We mooted her almost daily for nearly three weeks. She mastered the record. She tracked down and read every authority. After each moot court, she responded to feedback and improved her presentation. She did all this while maintaining full responsibility for her other pending clinic project (the cert petition described below). Ciara did a beautiful job with the argument.

Ciara's other two projects were equally challenging. She was asked to draft a petition for rehearing en banc involving the intersection of the Sixth Amendment speedy-trial right and *Younger* abstention. We were starting largely from scratch because the clinic hadn't handled the case at the panel stage. The issues would have been difficult for most practicing lawyers, yet Ciara understood them quickly, and she, along with two colleagues, produced a first-rate petition.

Ciara's final project was her largest. Again working with two other students, Ciara prepared a petition for a writ of certiorari on the question whether a prisoner's petition for compassionate release under the First Step Act may rely on legal errors in the prisoner's underlying criminal proceedings or whether those errors may be considered only on habeas review. The case is pending, and confidentiality concerns preclude me from disclosing much more. Suffice it to say that crafting a brief based on the traditional pedestals of cert-worthiness—a circuit conflict, the importance of the question presented, etc.—is an unusual task for a student. Yet Ciara quickly understood how this project differed from writing a normal appellate brief. She brought surprising sophistication to the assignment, along with the clear writing and analytical prowess I've already described.

* * *

As noted at the beginning of this letter, my clinic students are enrolled in a separately assessed seminar—the Appellate Courts and Advocacy Workshop. The first two-thirds of the course is an intensive review of basic federal appellate law doctrine, including the various bases for appellate jurisdiction and the standards and scope of review. In this part of the course, students must master the difficult doctrinal material and apply it in a half dozen challenging writing assignments. We then take a short detour into Supreme Court jurisdiction and practice. Toward the end of the course, we cover a few advanced legal writing and appellate advocacy topics. Only capable students willing to work hard do well in this course. Given the course's subject matter and its blend of doctrine, writing, and practice, the course often appeals to students who desire federal clerkships. Ciara's work in this class was consistently strong. On the most difficult assignment—a motion to dismiss for lack of appellate jurisdiction arising from a complex mass-tort class action—Ciara received a 3.9 on a 4.0 scale, the second highest grade in the course. Overall, Ciara earned an "A" in a class of high-preforming students.

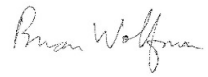
* * *

I want to address a few of Ciara's attributes beyond her pure legal ability.

Ciara generally operates independently. She tries to figure things out on his own—and generally succeeds—but she also knows when to contact mentors to seek guidance. As already indicated, she's a hard worker, and, even when under pressure, she stays on task and completes the job without getting rattled. Ciara is also honest and forthright and is willing to disagree with colleagues and mentors because she wants to get the job done right. Ciara also works very well with colleagues and mentors and has a great sense of humor. In short, she will be an excellent addition to any judicial chambers.

As I said at the beginning, I recommend Ciara Cooney for a clerkship with enthusiasm. If you would like to talk about Ciara, please call me at 202-661-6582.

Sincerely,



Brian Wolfman

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 2022

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Ciara Cooney to you with all the enthusiasm that decorum permits. Ciara is simply terrific—as a student and as a person.

Ciara (pronounced “Keera”) is very, very bright, and is at the very top of a large and competitive class. If she keeps up the good work and her GPA (3.95 as of this writing), I imagine she will be more than competitive for summa cum laude honors at graduation (last year, the cut-off for magna (top 10%) honors was 3.78). Ciara was enrolled in my Criminal Justice in the spring 2021 semester and earned the best exam out of 59 students, garnering one of the only grades of “A+” I have ever awarded. She again easily earned an “A” in my Federal White Collar Crime class this semester.

We teach basic constitutional criminal procedure in our first year Criminal Justice class, covering the Fourth, Fifth, and Sixth Amendments. Ciara’s exam rivaled my grading sheet and, given that I have been teaching the subject-matter for 26 years and wrote the exam, her performance was spectacular. Ciara knew the voluminous subject-matter cold, showcased outstanding analytical abilities, and demonstrated surprisingly (for her age) mature and balanced judgment in resolving close questions.

The spring semester was conducted entirely by zoom but it was a wonderful class, in great part because of Ciara’s participation. She is not a “gunner”; she was judicious in her contributions but she was clearly engaged in the discussion and volunteered often. At one point in the semester, a controversy arose because one of our adjuncts was recorded making racially offensive statements. I offered the students the opportunity to come to what I termed a “listening session,” during which I wanted to hear from them about the controversy and any other concerns they had about the institution or our classroom environment. Ciara was the only white student to show up, and she, too, was there to listen and learn.

Ciara enrolled this last semester in my Federal White Collar Crime class. This course provides a deep dive into a number of frequently charged federal statutes, including perjury, false statements and claims, fraud of all varieties, conspiracy, public corruption (§ 201, the Hobbs Act, and the Foreign Corrupt Practices Act), RICO, and money laundering. We also cover subjects such as mens rea, corporate criminal liability, the U.S. Sentencing Guidelines, grand jury practice, discovery, Fifth Amendment as applied to testimony (and immunity issues) and tangible objects, plea bargaining, parallel proceedings, and the extraterritorial application of criminal statutes. In short, it is a very demanding class in terms of both subject-matter and the sheer volume of law and required reading. Again, Ciara wrote just a terrific exam. Her “A” reflected a comprehensive knowledge of complex materials, terrific analytical ability, and good judgment in resolving close questions.

Unlike most of my students, Ciara is interested in starting her career on the public defense side. This is born of her experiences at two firms engaging in both federal white-collar defense work and the pro bono defense of a Nigerian national incarcerated in the U.K. and fighting extradition to the United States to face credit card fraud charges. Ciara’s ambition was, until those experiences, to become an AUSA, but observing the different processes and outcomes applied to wealthy, as opposed to low-income, defendants caused her to reassess. She felt that many prosecutors were deaf to facts that conflicted with their theory of guilt, presumed guilt rather than innocence, and were dismissive of the humanity of their targets and indifferent to the human impact of their choices. Although I am a former federal prosecutor, I have encouraged Ciara in her ambition because it is the product of experience and a deep commitment to a fair criminal process. She has the extraordinary gifts and passion to ensure that justice is fairly done in our courtrooms by putting prosecutors to the test.

I know personal chemistry is hard to forecast, but I will say that I have found Ciara to be refreshingly straightforward, unassuming, and earnest. And I have truly enjoyed all my many interactions with her. Ciara has a good sense of humor and is a lively and interesting person—and someone I believe will be a very positive presence in chambers. In this regard, I know that many judges like to know a little more about the backgrounds of applicants they are considering inviting into the chambers family and perhaps I can offer some information of value.

Ciara was born in a village in the British countryside to an American mother and an Irish father. Her family immigrated to the United States when she was 9, and she remains cosmopolitan in attitude. She aspires to travel more widely than her father, who has lived in 5 countries and traveled to more than 65. Despite the pandemic, Ciara’s current record of traveling to 27 countries shows her commitment to this endeavor. It is Ciara’s mother, however, who is her role model. Ciara describes her mom as a force of nature, beloved by all. A corporate immigration lawyer who runs a large office and is the family breadwinner, Ciara’s mother somehow got three kids off to school every day and cooked dinner every night. Ciara says that her mom would show up at all Ciara’s field hockey games, running across the field in kitten heels and hauling a briefcase or two bulging with work. Ciara professes herself “dumbfounded” by her mother’s ability to balance everything and aspires to model her mother’s strength and kindness. I believe that Ciara is well on her way. She has modeled a conscientious commitment to others who need her help by

Julie O'Sullivan - osullij1@law.georgetown.edu

undertaking to tutor first-year students. She works very hard, but never at the sacrifice of friendships or family.

I apologize for going on at such length, but I belief that Ciara is a star. She has the native smarts, developed skills, passion, personality, and values to be an extraordinary clerk. And she is someone who you will be delighted—and proud—to mentor in the years ahead.

Sincerely yours,

Julie R. O'Sullivan
Agnes Williams Sesquicentennial Professor